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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 427

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ALFRED C. FULLER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 29, 1939
CERTIORARI GRANTED FEBRUARY 5, 1940

SUPREME COURT OF THE UNITED STATES

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1 Before United States Board of Tax Appeals

Docket No. 81049

ALFRED C. FULLER, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For Petitioner: Francis W. Cole, Esq., John C. Parsons, Esq. For Respondent: P. A. Bayer, Esq.

1935

Aug. 9—Petition received and filed. Taxpayer notified. (Fee paid.)

Aug. 9—Copy of petition served on General Counsel.

Sept. 30—Answer filed by General Counsel.

Oct. 7—Copy of answer served on taxpayer.

1936

May 5—Amendment to petition filed by taxpayer. May 5, 1936, copy served on General Counsel.

May 13—Answer to amendment to petition filed by general Counsel.

May 15—Copy of answer to amendment to petition served on taxpayer.

Oct. 21—Motion for circuit hearing in New York filed by taxpayer. October 22, 1936, granted.

1937

Aug. 6—Hearing set week beginning October 11, 1937, in New York City.

Oct. 14—Hearing had before Mr. Van Fossan on merits. Submitted. Dockets 81049 and 83,919 consolidated for hearing. Appearance of John C. Parsons and stipulation of facts filed. Briefs due as per rules. Called October 11, 1937.

2 Oct. 27—Transcript of hearing October 14, 1937, filed.

Nov. 17—Brief filed by taxpayer. November 17, 1937, copy served on General Counsel.

Dec. 22—Reply brief filed by General Counsel.

1938

Jan. 19—Reply brief lodged by taxpayer. Motion for leave to file reply brief filed by taxpayer. January 20, 1938, granted.

Jan. 20—Copy of reply brief served on General Counsel.

Jan. 21—Copy of motion, brief and duplicate served on General Counsel.

Mar. 11—Memorandum opinion rendered—Ernest H. Van Fossan, Division 9. Decision will be entered under Rule 50.
Mar. 29—Computation of deficiency filed by General Counsel.
Mar. 31—Hearing set April 20, 1938, on settlement.
Apr. 16—Consent to settlement filed by taxpayer.
Apr. 19—Decision entered—Ernest H. Van Fossan, Division 9.
May 28—Application to fix amount of bond in sum of $28,000.00 filed by taxpayer.
May 31—Order fixing amount of bond in the sum of $32,000 entered.
July 8—Supersedeas bond in the amount of $32,000.00 approved and ordered filed.
July 8—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
Aug. 6—Proof of service filed by taxpayer.
Aug. 6—Praecipe filed by taxpayer.
Aug. 18—Proof of service of praecipe filed by taxpayer.

3 Before United States Board of Tax Appeals.

Docket No. 83919

ALFRED C. FULLER, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For Petitioner: Francis W. Cole, Esq., John C. Parsons, Esq. For Respondent: P. A. Bayer, Esq.

1936

Apr. 29—Petition received and filed. Taxpayer notified. (Fee paid.)
Apr. 29—Copy of petition served on General Counsel.
May 26—Answer filed by General Counsel.
May 28—Copy of answer served on taxpayer.
Oct. 21—Motion for circuit hearing at New York City filed by taxpayer. October 22, 1936, granted.

1937

Aug. 6—Hearing set week of October 11, 1937, New York City, N. Y.
Oct. 14—Hearing had before Mr. Van Fossan on merits. Called October 11, 1937. Submitted. Dockets 81049 and 83919 consolidated for hearing. Appearance of John C. Parsons and stipulation of facts filed. Briefs due as per rules.

Oct. 27—Transcript of hearing October 14, 1937, filed.
Nov. 17—Brief filed by taxpayer. November 17, 1937, copy served on General Counsel.
Dec. 22—Reply brief filed by General Counsel.
1938
4 Jan. 19—Reply brief lodged by taxpayer. Motion for leave to file reply brief filed by taxpayer. January 20, 1938, granted.
Jan. 20—Copy of reply brief served on General Counsel.
Jan. 21—Copy of motion and brief served on General Counsel.
Mar. 11—Memorandum opinion rendered—Ernest H. Van Fossan, Division 9. Decision will be entered under Rule 50.
Mar. 29—Computation of deficiency filed by General Counsel.
Mar. 31—Hearing set April 20, 1938, on settlement.
Apr. 15—Consent to settlement filed by taxpayer.
Apr. 19—Decision entered—C. R. Arundell, Division 7.
May 28—Application to fix amount of bond in sum of $28,000.00 filed by taxpayer.
May 31—Order fixing bond in the amount of $32,000.00 entered.
July 8—Supersedeas bond in the amount of $32,000.00 approved and ordered filed.
July 8—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
Aug. 6—Proof of service filed by taxpayer.
Aug. 6—Praecipe filed by taxpayer.
Aug. 18—Proof of service of praecipe filed by taxpayer.

5 Before United States Board of Tax Appeals

[Title omitted.]

Petition No. 81,049

Filed Aug. 9, 1935

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (under Bureau Symbols IT:AR:B-2 BH-90-D) dated May 31, 1935, and as a basis for his proceeding, alleges as follows:

1. The petitioner is an individual with his residence at 32 Colony Road, West Hartford, Connecticut.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 31, 1935.

3. The taxes in controversy are—

(a) Income taxes for the calendar year 1931 in the amount of $11,227.66. The deficiency asserted is $10,311.09 and the petitioner

claims that he has made an overpayment and is entitled to a refund of $916.57;

(b) Income taxes for the calendar year 1932, and the deficiency asserted for said year is $4,732.93, of which amount $4,630.74 is in controversy.

6 4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

(1) The inclusion in the petitioner's gross income for the calendar years 1931 and 1932 of the amount of the income earned during said years by an irrevocable trust created by an agreement entered into on December 22, 1930, between the petitioner, his divorced wife, Evelyn W. Fuller, and The Hartford-Connecticut Trust Company, which agreement was entered into pursuant to an agreement between the petitioner and his then wife, said Evelyn W. Fuller, dated July 25, 1930.

(2) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar years 1931 and 1932 although the petitioner had no control over the disposition of said income and although said income never belonged to the petitioner and was never paid to or received by him, but was paid to The Hartford-Connecticut Trust Company as Trustee for the benefit of the petitioner's divorced wife, Evelyn W. Fuller, in accordance with the terms of said above-mentioned agreements.

(3) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar years 1931 and 1932 although no part of said income was used to discharge or defray any legal obligation imposed upon the petitioner or was used in any way for his benefit.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) The petitioner and Evelyn W. Fuller were married on April 8, 1908, and on July 25, 1930, had two minor children, aged seventeen and fourteen, respectively.

7 (b) On said July 25, 1930, the petitioner and his then wife, Evelyn W. Fuller, entered into an agreement in writing whereby the petitioner agreed, inter alia, to make an irrevocable transfer in trust for the period of ten years, with remainder over, of 60,380 shares of the common capital stock, Class A, of The Fuller Brush Company for the benefit of his wife and minor children and to that end to part with all right, title, and interest to said shares of stock and to the income therefrom, except the voting rights upon said shares which the petitioner reserved to himself for said period of ten years or for such portion thereof as he should live. The transfer in trust provided for by the terms of this agreement was to be-

come effective upon the issuance of a decree of divorce to the petitioner's wife in a divorce action contemplated at the time of the execution of said agreement. A copy of said agreement marked Exhibit B is attached hereto and made a part hereof.

(c) On November 12, 1930, the Second District Court of the State of Nevada in and for the County of Washoe entered its Findings and Decree in a divorce action brought by said Evelyn W. Fuller against the petitioner wherein said Court found "that the plaintiff and the defendant had heretofore on or about the 25th day of July 1930, entered into a written agreement for the custody and support of said minor children, for the support of the plaintiff and in settlement of the property rights of the plaintiff and the defendant," and, after decreeing that Evelyn W. Fuller "be, and she hereby is, granted a divorce from the bonds of matrimony existing between the plaintiff and the defendant," said Court further decreed "that said agreement entered into between the plaintiff and the defendant on or about the 25th day of July 1930, be and the same hereby is approved." A copy of said Findings and Decree marked Exhibit C is attached hereto and made a part hereof.

(d) On December 22, 1930, the petitioner, his divorced wife, Evelyn W. Fuller, and The Hartford-Connecticut Trust Company entered into an indenture or agreement of trust for the purpose of reaffirming the terms of and effectuating said agreement of July 25, 1930 (Exhibit B). A copy of this indenture or agreement of trust marked Exhibit D is attached hereto and made a part hereof.

(e) In accordance with the terms of said agreement of July 25, 1930 (Exhibit B) and of said agreement of December 22, 1930 (Exhibit D), the petitioner caused said 60,380 shares of the common capital stock, Class A, of The Fuller Brush Company to be transferred to himself as Trustee under Trust Deed dated December 22, 1930, and delivered possession of a certificate representing the same to said The Hartford-Connecticut Trust Company and the petitioner executed and delivered to said The Fuller Brush Company an order to pay all dividends upon said 60,380 shares to said The Hartford-Connecticut Trust Company as Trustee under said agreement of December 22, 1930.

(f) In accordance with the terms of said above-mentioned agreements and said dividend order, all the income or dividends during the calendar years 1931 and 1932 and thereafter from said 60,380 shares of the common capital stock, Class A, of The Fuller Brush Company have been paid to said The Hartford-Connecticut Trust Company at Trustee and expended for the maintenance and support of the petitioner's divorced wife, Evelyn W. Fuller.

9 (g) No part of the income or dividends from said 60,380 shares of common capital stock, Class A, of The Fuller Brush Company has at any time belonged to the petitioner or been received by or paid to him.

Wherefore, the petitioner prays that this Board may hear the proceeding and grant him the following relief:

(a) A decision setting aside and denying the deficiency in income tax alleged by the Commissioner for the calendar year 1931 and determining that there has been an over-payment of income tax for said calendar year 1931 in the amount of $916.57.

(b) A redetermination of the deficiency in income tax alleged by the Commissioner for the calendar year 1932 and a decision that there is a deficiency in income tax for said calendar year 1932 of $102.19.

(c) Such other and further relief as in the premises the Board may deem fit and proper.

FRANCIS W. COLE,
Counsel for Petitioner,
Francis W. Cole,
750 Main Street, Hartford, Connecticut.

[*Duly sworn to by Alfred C. Fuller; jurat omitted in printing.*]

10 *Exhibit A to petition*

TREASURY DEPARTMENT,
Washington, May 31, '35.

Office of Commissioner of Internal Revenue.

MR. ALFRED C. FULLER,
32 Colony Road, West Hartford, Connecticut.

SIR: You are advised that the determination of your income tax liability for the year(s) 1931 and 1932 discloses a deficiency of $15,044.02 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1928 and section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

11 Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form

will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

STATEMENT

IT:AR:B-2.
BH-90D.

In re: Mr. Alfred C. Fuller, 32 Colony Road, West Hartford, Connecticut

INCOME TAX LIABILITY

Years	Income tax liability	Income tax assessed	Deficiency
1931	$15,082.65	$4,771.56	$10,311.09
1932	4,732.93	None	4,732.93
Totals	$19,815.58	$4,771.56	$15,044.02

12 Reference is made to the reports of the internal revenue agent in charge at New Haven, Connecticut, covering your income tax liability for the years 1931 and 1932.

Due consideration has been accorded your protests dated March 28, 1933, and March 28, 1934, in connection with the findings of the examining officer for the years 1931 and 1932, respectively, and information submitted at a conference held in the office of the internal revenue agent in charge.

The examination of your records discloses that you created a trust known as the Alfred C. Fuller Trust under an agreement entered into on July 25, 1930, between yourself and wife, Evelyn W. Fuller, in contemplation of divorce proceedings as a settlement of your respective property rights and duties in respect to the support and maintenance of your wife and minor children. In the decree of the court the agreement was ratified and the trust indenture was executed by you and your wife on December 12, 1930, on substantially the same terms as set forth in the agreement.

In this connection you are advised that the United States Circuit Court of Appeals for the Eighth Circuit held in the case of Edward B. Douglas in the decision rendered September 10, 1934, that a taxpayer who created a trust estate, the income from which was to be paid to his divorced wife in lieu of alimony and any other interest in his property, or estate, is taxable upon such income, the payments therefrom being a direct benefit to him in the discharge of a legal obligation which he was bound to fulfill under the decree of the court.

The United States Supreme Court in the case of Audubon vs. Shufeldt, 181 U. S. 575, 577, and 578 stated as follows:

13 "Alimony does not arise of any business transaction, but from the relation of marriage. It is not founded on contract, expressed or implied, but on the natural and legal duty of the husband to support his wife. The general obligation to support is made specific by the decree of the court of appropriate jurisdiction."

In lieu of the above decision it is the opinion of this office that the income of the Alfred C. Fuller Trust constitutes taxable income to you.

1931

Income reported on return		$63,697.24
Add:		
Income from revocable trusts		14,886.02
Dividends		60,380.00
Total		$138,963.26
Less: Loss on stocks		20,750.00
Adjusted net income		$118,213.26
Less:		
Dividends	123,373.05	
Personal exemption and credit for dependents	1,900.00	125,273.05
Balance subject to normal tax		None
Surtax on $118,213.26		15,302.65
Less: Credit of 25% on earned net income		220.00
Income tax liability		$15,082.65
Income tax assessed		4,771.56
Deficiency		$10,311.09

14 The income of the Investment Trust No. 1 and Investment Trust No. 2 is taxable to you as grantor. In article 16 of the trust instrument, it is stated that the trusts are to be irrevocable. In article 3 the donor reserves the sole right of altering or amending the provisions governing the disposition of the principal and income and to appoint the beneficiaries of the trust during the continuance of the trust. The trusts are revocable trusts and under the provisions of article 166 of the Revenue Act of 1928 all income is taxable to you as grantor.

The United States Supreme Court rendered the following decision in the case of Frederick B. Wells on May 29, 1933:

"Income permanently applied by the act of the taxpayer to the maintenance of contracts of insurance made in his name for the support of his dependents is income used for his benefit in such a sense and to such a degree that there is nothing arbitrary or tyrannical in taxing it as his."

The examination of your records also discloses that a loss of $20,750.00 was sustained on account of worthless stock of The Canton Company for the year 1931.

Inasmuch as this adjustment discloses a deficiency in tax, your claim for the refund of $916.57, income tax for the year 1931, will be disallowed. Official notice of the disallowance will be issued by registered mail in accordance with the provisions of section 1103 of the Revenue Act of 1932.

15

1932

Income reported on return		$1,048.78
Add:		
Interest		110.60
Dividends		36,228.00
Interest deduction disallowed		16,775.00
Total		$54,162.38
Less: Bad debt allowed		5,194.50
Adjusted net income		$48,967.88
Less:		
Dividends	$2,706.00	
Personal exemption and credit for dependents	2,483.32	75,189.32
Balance subject to normal tax		None
Surtax on $48,967.88		4,732.93
Income tax liability		4,732.93
Income tax assessed		None
Deficiency		$4,732.93

The deduction of $16,775.00 claimed as interest paid is disallowed for the reason that it was paid to the revocable trusts, Investment Trust No. 1 and Investment Trust No. 2 on notes given by you to the trust. As explained under 1931 the trusts are held to be revocable and the income of the trusts is taxable to you.

Inasmuch as the income of the trusts, interest received on the notes of which you are the maker, was not reported
16 by you, you are not entitled to the deduction for interest paid.

The payments made in 1932 by you as indorser on notes of The Canton Company, held by the Mechanics National Bank of New York, have been allowed as deductions against your income for 1932.

In a letter dated May 15, 1935, from your attorneys it is stated that you do not desire to execute an agreement to the deficiencies stated above. It is therefore necessary to issue this final statutory notice of deficiency.

A copy of this letter has been mailed to your representatives, Messrs. Hadfield, Rothwell, Soule and Coates, 750 Main Street, Hartford, Connecticut, in accordance with the authority conferred upon them in the power of attorney executed by you and on file with the Bureau.

Before United States Board of Tax Appeals

[Title omitted.]

Answer, No. 81049

Filed Sept. 30, 1935

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3 (a). Admits that the taxes in controversy are income taxes for the calendar year 1931. Further admits that the deficiency asserted in the formal notice dated May 31, 1935, is $10,311.09 for the year 1931. Denies all the remaining allegations contained in subparagraph (a) of paragraph 3 of the petition.

3 (b). Admits the allegations contained in paragraph 3 (b) of the petition.

4 (1), (2), and (3). Denies respondent erred as alleged and set forth in subparagraphs (1), (2), and (3) of paragraph 4 of the petition.

5 (a) to (g). Denies the material allegations of fact contained in subparagraphs (a) to (g) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in taxpayer's petition, not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel for the
Bureau of Internal Revenue.

Of Counsel:
W. FRANK GIBBS,
BERNARD D. DANIELS,
Special Attorneys,
Bureau of Internal Revenue.

BDD dt-9/27/35.

18 Before United States Board of Tax Appeals

[Title omitted.]

Amendment to petition, No. 81049

Filed May 5, 1936

The petitioner in the above-entitled proceeding hereby amends his petition by the insertion of the following subparagraph in paragraph 4 thereof as an additional ground of error upon which the determination of the tax set forth in the notice of deficiency is based—

(4) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar years 1931 and 1932 respectively is, in effect, to measure the petitioner's tax not by his own income but in part by that of another, contrary to due process of law as guaranteed by the Fifth Amendment to the United States Constitution and is equivalent to an exaction of tribute from the petitioner measured by income or return on property which does not belong to him.

Dated at Hartford, Conn., this 25th day of April 1936.

FRANCIS W. COLE,
Counsel for Petitioner.
Francis W. Cole,
750 Main Street, Hartford, Connecticut.

This amendment and the filing thereof are hereby consented to.

By HERMAN OLIPHANT,
General Counsel.

19 Before United States Board of Tax Appeals

[Title omitted.]

Answer to amendment to petition, No. 81049

Filed May 13, 1936

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the amendment to the petition filed in the above-entitled appeals hereby denies as follows:

4. Denies the respondent erred as alleged in paragraph 4 of the amendment to the petition.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) HERMAN OLIPHANT,
Herman Oliphant,
General Counsel for the
Department of the Treasury.

Of Counsel:
W. FRANK GIBBS,
BERNARD D. DANIELS,
Special Attorneys,
Bureau of Internal Revenue.

BDD/dt-May 13, 1936.

20 Before United States Board of Tax Appeals

[Title omitted.]

Petition No. 83,949

Filed April 29, 1936

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (under Bureau Symbols IT:AR;B-2 SMC-90-D) dated February 8, 1936, and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual with his residence at 32 Colony Road, West Hartford, Connecticut.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on February 8, 1936.

3. The taxes in controversy are income taxes for the calendar year 1933, and the deficiency asserted for said year is $5,320.30, of which amount $5,113.66 is in controversy.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

21 (1) The inclusion in the petitioner's gross income for the calendar year 1933 of the amount of the income earned during said years by an irrevocable trust created by an agreement entered into on December 22, 1930, between the petitioner, his divorced wife, Evelyn W. Fuller, and The Hartford-Connecticut Trust Company, which agreement was entered into pursuant to an agreement between the petitioner and his then wife, said Evelyn W. Fuller, dated July 25, 1930.

(2) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar year 1933 although the petitioner had

no control over the disposition of said income and although said income never belonged to the petitioner and was never paid to or received by him, but was paid to The Hartford-Connecticut Trust Company as Trustee for the benefit of the petitioner's divorced wife, Evelyn W. Fuller, in accordance with the terms of said above-mentioned agreements.

(3) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar year 1933 although no part of said income was used to discharge or defray any legal obligation imposed upon the petitioner or was used in any way for his benefit.

(4) The determination by the Commissioner that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar year 1933 is, in effect, to measure the petitioner's tax not by his own income but in part by that of another, contrary to due process of law as guaranteed by the Fifth Amendment to the United States Constitution and is equivalent to an exaction of tribute from the petitioner measured by income or return on property which does not belong to him.

22 5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) The petitioner and Evelyn W. Fuller were married on April 8, 1908, and on July 25, 1930, had two minor children, aged seventeen and fourteen, respectively.

(b) On said July 25, 1930, the petitioner and his then wife, Evelyn W. Fuller, entered into an agreement in writing whereby the petitioner agreed, inter alia, to make an irrevocable transfer in trust for the period of ten years, with remainder over, of 60,380 shares of the common capital stock, Class A, of The Fuller Brush Company for the benefit of his wife and minor children and to that end to part with all right, title, and interest to said shares of stock and to the income therefrom, except the voting rights upon said shares which the petitioner reserved to himself for said period of ten years or for such portion thereof as he should live. The transfer in trust provided for by the terms of this agreement was to become effective upon the issuance of a decree of divorce to the petitioner's wife in a divorce action contemplated at the time of the execution of said agreement. A copy of said agreement marked Exhibit B is attached hereto and made a part hereof.

(c) On November 12, 1930, the Second District Court of the State of Nevada in and for the County of Washoe entered its Findings and Decree in a divorce action brought by said Evelyn W. Fuller against the petitioner wherein said Court found "that the plaintiff and the defendant had heretofore on or about the 25th day of July 1930 entered into a written agreement for the custody and support of said minor children, for the support of the plain-

23 tiff and in settlement of the property rights of the plaintiff and the defendant," and "after decreeing that Evelyn W. Fuller "be, and she hereby is, granted a divorce from the bonds of matrimony existing between the plaintiff and the defendant" said Court further decreed "that said agreement entered into between the plaintiff and the defendant on or about the 25th day of July 1930 be and the same hereby is approved." A copy of said Findings and Decree marked Exhibit C is attached hereto and made a part hereof.

(d) On December 22, 1930, the petitioner, his divorced wife, Evelyn W. Fuller, and The Hartford-Connecticut Trust Company entered into an indenture or agreement of trust for the purpose of reaffirming the terms of and effectuating said agreement of July 25, 1930 (Exhibit B). A copy of this indenture or agreement of trust marked Exhibit D is attached hereto and made a part hereof.

(e) In accordance with the terms of said agreement of July 25, 1930 (Exhibit B), and of said agreement of December 22, 1930 (Exhibit D), the petitioner caused said 60,380 shares of the common capital stock, Class A, of The Fuller Brush Company to be transferred to himself as Trustee under Trust Deed dated December 22, 1930, and delivered possession of a certificate representing the same to said The Hartford-Connecticut Trust Company, and the petitioner executed and delivered to said The Fuller Brush Company an order to pay all dividends upon said 60,380 shares to said The Hartford-Connecticut Trust Company as Trustee under said agreement of December 22, 1930.

(f) In accordance with the terms of said above-mentioned agreements and said dividend order, all the income or dividends during the calendar year 1933 and thereafter from said 60,380 shares of the common capital stock, Class A, of The Fuller
24 Brush Company have been paid to said The Hartford-Connecticut Trust Company as Trustee and expended for the maintenance and support of the petitioner's divorced wife, Evelyn W. Fuller.

(g) No part of the income or dividends from said 60,380 shares of common capital stock, Class A, of The Fuller Brush Company has at any time belonged to the petitioner or been received by or paid to him.

Wherefore, the petitioner prays that this Board may hear the proceeding and grant him the following relief:

(a) A redetermination of the deficiency in income tax alleged by the Commissioner for the calendar year 1933 and a decision that there is a deficiency in income tax for said calendar year 1933 of $206.64.

(b) Such other and further relief as in the premises the Board may deem fit and proper.

(Signed) FRANCIS W. COLE,
Francis W. Cole,
Counsel for Petitioner,
750 Main Street, Hartford, Connecticut.

[*Duly sworn to by Alfred C. Fuller; jurat omitted in printing.*]

25 *Exhibit A to petition*

TREASURY DEPARTMENT,
Washington, Feb. 8, 1936.

Office of Commissioner of Internal Revenue.

MR. ALFRED C. FULLER,
32 Colony Road, West Hartford, Connecticut.

SIR: You are advised that the determination of your income tax liability for the taxable year(s) 1933 discloses a deficiency of $5,320.30, as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of
26 interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.
By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

STATEMENT

IT:AR:B-2.
SMC-90D.

In re: Mr. Alfred C. Fuller, 32 Colony Road, West Hartford, Connecticut

INCOME TAX LIABILITY

Year 1933; income tax liability $10,403.16; income tax assessed $5,082.86; deficiency $5,320.30.

The deficiency shown herein is based upon the report dated June 11, 1935, prepared by Revenue Agent Herbert W. Huber, a copy of which was transmitted to you.

Determination of net income:

Net income reported on return		$43,804.00
Increased by:		
1. Additional dividends	$20,529.20	
2. Interest paid, disallowed	745.00	21,274.20
Net income revised		$65,078.20

27

EXPLANATION OF CHANGES

1. You are advised that the review of the return filed for the Alfred C. Fuller Trust shows that income in the amount of $20,529.20 classified as dividends was distributed to Evelyn W. Fuller. Since this trust was created by you and the income therefrom made payable to Mrs. Evelyn W. Fuller in lieu of alimony, the Bureau holds that it is taxable to you in accordance with the decision rendered on November 11, 1935, by the Supreme Court of the United States on the case of Edward B. Douglas.

In view of the fact that the issue in the case referred to above is analogous in principle to your case, the income in question is included in your gross income.

2. The deduction for interest paid as shown on your return has been decreased by $745.00. It appears that this amount was paid by you on the principal of two revocable trusts created by you, the income from which is used to pay premiums on your life insurance policies.

The examining officer is sustained by the Bureau in disallowing this item as a deduction since it represents a personal expense.

COMPUTATION OF TAX

Net income revised		$85,078.20
Less:		
Dividends	$41,681.95	
Personal exemption	2,500.00	
Credit for dependent	400.00	44,581.95
Balance subject to normal tax		$20,496.25
Normal tax at 4% on $4,000.00		160.00
Normal tax at 8% on $16,496.25		1,319.70
Surtax on $85,078.20		8,923.46
Correct tax liability		$10,403.16
Tax previously assessed original, account No. 200,279		5,082.86
Deficiency in tax		$5,320.30

The records of this office indicate that no reply has been received to Bureau letter dated January 20, 1936, advising you of the proposed deficiency outlined herein.

A copy of this letter has been mailed to your representative, Mr. Glen W. Fox, 50 State Street, Hartford, Connecticut, in accordance with the authority conferred upon him in the power of attorney executed by you and on file with the Bureau.

Before United States Board of Tax Appeals

[Title omitted.]

Answer, No. 83,919

Filed May 26, 1936

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

29 1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the year 1933. and admits the deficiency asserted amounts to $5,320.30, but denies the remaining allegations of paragraph 3.

4. Denies the respondent's determination of petitioner's income tax liability is based upon the errors alleged and set forth in paragraph 4.

5 (a) Admits the allegations contained in paragraph 5 (a).

5 (b) to 5 (g) incl. Denies the allegations contained in paragraphs 5 (b) to 5 (g), inclusive.

6. Denies generally and specifically each and every allegation contained in taxpayer's petition, not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) HERMAN OLIPHANT,
Herman Oliphant,
General Counsel for the
Department of the Treasury.

Of Counsel:
W. FRANK GIBBS,
Special Attorney,
Bureau of Internal Revenue.

WFG/dt–May 26/36.

30 Before United States Board of Tax Appeals

Docket No. 81049

ALFRED C. FULLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 83919

ALFRED C. FULLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Stipulation of facts

Filed Oct. 14, 1937

It is hereby stipulated and agreed by and between the petitioner and the respondent by their respective attorneys of record that the following may be considered true by the United States Board of Tax Appeals for the purpose only of determining the issues raised in the above entitled appeals.

1. The petitioner is an individual and at all times herein material has resided in the City of Hartford, State of Connecticut. He filed his income tax returns for the years 1931, 1932 and 1933 with the Collector of Internal Revenue for the District in which he resided.

2. The petitioner was married to Evelyn W. Fuller on April 8, 1908.

31 3. On July 25, 1930, the petitioner and said Evelyn W. Fuller, as husband and wife, had two children, both sons, namely Alfred H. Fuller, born March 27, 1913, and Avard E. Fuller, born March 17, 1916.

4. On and before July 25, 1930, the said Evelyn W. Fuller had grounds for divorce against the petitioner and intended to institute divorce proceedings against him which he did not intend to oppose.

5. On July 25, 1930, petitioner and the said Evelyn W. Fuller, entered into a written agreement, copy of which is attached hereto marked Exhibit A and which is made a part hereof as fully as if set forth herein.

6. On November 12, 1930, the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, made its findings and decree in the divorce action brought by the said Evelyn W. Fuller against the petitioner, Alfred C. Fuller, in said Court. A copy of said Findings and Decree is hereto attached as Exhibit B and made a part hereof as fully as if set herein.

7. Thereafter, on December 22, 1930, the petitioner, the said Evelyn W. Fuller and The Hartford-Connecticut Trust Company, a State bank and trust company located in Hartford, Connecticut, entered into a written agreement, copy of which is hereto attached marked Exhibit C and which is made a part hereof as fully as if set forth herein.

8. At the time said agreements were executed the said Evelyn W. Fuller had no substantial amount of separate funds of her own available to her as a means of support.

9. Thereafter, in accordance with the terms of said agreement of December 22, 1930, the petitioner caused to be transferred on the books of The Fuller Brush Company 60,380 shares of the Class A stock of said Company from himself individually to himself as Trustee, and subsequently delivered the certificate for said shares of stock to the corporate Trustee named in said agreement. In further pursuance of the terms of said agreement, the petitioner executed a dividend order against said shares of stock directing The Fuller Brush Company to pay all dividends thereon to said corporate Trustee.

32

10. Said The Hartford-Connecticut Trust Company, Trustee as aforesaid, has received from The Fuller Brush Company all the dividends and income from said stock during the years 1931, 1932, and 1933, the amount of said dividends being $60,380 in 1931, $36,228 in 1932, and $20,529.20 in 1933.

11. All of said dividends and income so received by said corporate Trustee have been paid out to or disbursed for the benefit of Evelyn W. Fuller by said Trust Company.

12. The corporate trustee did not pay any part of said dividends at any time or any of the income from said trust to the petitioner.

13. The petitioner did not report in his income tax return for the year 1931 or the year 1932 or the year 1933 any of the dividends on said 60,380 shares of Fuller Brush Company stock which constituted the income of said trust fund.

14. The petitioner Alfred C. Fuller is the founder of The Fuller Brush Company and during all the years here involved he was the President of that Corporation. During said
33 years the Corporation had outstanding only one class of voting stock, namely, its Class A Common Stock. The amount of said stock outstanding in said years varied between 172,000 and 186,000 shares. The petitioner during said years owned 60,380 shares of said stock. Said stock owned by the petitioner together with the 60,380 shares of said Class A Common Stock referred to in paragraph 9 of this stipulation, constituted more than a majority of said class of stock.

15. The only issue the Board is now called upon to decide is whether said income from said trust fund should be treated as income of the petitioner for income tax purposes.

FRANCIS W. COLE,
Counsel for the Petitioner.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

Exhibit A to stipulation of facts

AGREEMENT

This agreement made by and between Alfred C. Fuller, hereinafter called the first party, and his wife, Evelyn W. Fuller, hereinafter called the second party, witnesseth:

Whereas, in the opinion of the parties hereto, the second party has grounds for divorce against the first party and intends to institute legal proceedings to secure the same, to which the first party intends to make no opposition of any kind, either in Court or elsewhere, and,
34 Whereas, the parties intend in and by this agreement to adjust, settle, and determine their respective rights and duties in respect to the support and maintenance of the second party and their children, the custody of the latter and the rights of each in and to the property of the other, if any, in lieu of a judicial determination thereof in said contemplated divorce action and the first party intends to create a trust for the benefit of the second party for her support and maintenance on a monetary and social scale equal to that of her present mode of living and to

make other provisions for the benefit of the second party and their children.

Now, therefore, in consideration of One ($1.00) Dollar, to each in hand paid by the other, the receipt whereof is hereby acknowledged and the mutual covenants herein contained, it is hereby agreed as follows:

First. The second party proposes to institute legal proceedings to secure a divorce from the first party as soon as she conveniently can, after execution of this contract, and the first party agrees to pay the second party all expenses arising from or connected with said proceedings, including court fees and costs, attorney's fees, traveling and hotel expenses, upon demand of the second party.

Second. The first party hereby agrees to deliver forthwith a certificate for Sixty Thousand Three Hundred Eighty (60,380) shares of the common capital stock, known as Class A, of The Fuller Brush Company, a Connecticut corporation with its principal office in the City of Hartford, with power of attorney for transfer, to James W. Carpenter, attorney-at-law, of Day, Berry and Reynolds, attorneys of Hartford, Connecticut, to be held by him in escrow until the issuance of a decree of divorce to the
35 second party as described in the first paragraph hereof.

Thereupon the said James W. Carpenter is hereby authorized and directed, except as hereinafter provided, to cause said shares of stock to be transferred on the books of the said company, to three trustees, consisting of the two parties hereto and The Hartford-Connecticut Trust Company, a banking corporation of Hartford, to be held by them in trust for the purpose herein specified. The physical custody thereof and of all income and emoluments therefrom when paid and transferred by said Fuller Brush Company shall be in the said Trust Company, said income and emoluments to be held by the Trust Company and the second party in trust for the purposes herein specified, expressly reserving to the first party during the trust period, or for such portion thereof as he shall survive, all voting rights upon said shares of stock while held in trust, and upon his death said voting rights are to vest in the second party, or in her and the said Trust Company. If, however, the first party should conclude before said Transfer of the said certificate of stock to the said trustees, that in order to preserve to him said voting rights intact and unchallenged, the said stock should be transferred to him alone as a trustee under said trust, and shall so notify said James W. Carpenter, then the latter shall cause said stock to be transferred on the books of the said Fuller Brush Company to the first party as a trustee under said trust, and the latter shall thereupon place the certificate of said stock in the custody of the said trust com-

pany with a power of attorney to transfer the same for trust purposes, as hereinafter provided, and the said first party shall cause all dividends, whether in cash or in stock, all income and rights from said stock, to be paid, when payable, or transferred,
when transferable, to the said two trustees, the said trust
36 company and second party as a part of said trust, the parties
hereto intending hereby to preserve to the first party all voting rights on said stock during said trust, or for such portion thereof as be shall survive, and to the said two trustees for the purposes of said trust, all the rights, income, and emoluments from said stock.

The said three trustees shall have and hold said certificate of stock and devote it, for an absolute period of ten years in any event, as, when, and how they shall determine in their absolute discretion, under an irrevocable trust for the following purposes: Maintenance and support of the second party, or in case of her prior decease, then the maintenance and support of her two sons, hereinafter named, or the survivor thereof, or in case of their prior decease, then the maintenance and support of the heirs of the second party or as she shall provide in her will, with power in said trustees to withhold and accumulate and invest and reinvest said principal, in whole or in part, for said purposes, and to sell said stock in whole or in part, and invest the proceeds thereof for said purposes, all at their sole discretion, the power of sale to be exercised only when the three trustees agree in writing thereto. The income from said stock or principal, however, shall be held in trust by the said trust company and the second party for the following purposes: Maintenance and support of the second party, or in case of her prior decease, then the maintenance and support of her two sons hereinafter named, or the survivor thereof, or in case of their prior decease, then the maintenance and support of the heirs of the second party, or as she shall provide in her will, with power in said trustees to withhold, accumulate, invest, and reinvest said income in whole or in part for said purposes, all at their sole discretion.

At the expiration of said period said principal and all accumu-
lated dividends, interest, rights, and income, if any, not
37 previously paid by said trustees as provided herein, shall become the absolute property of the second party, with right of disposal by will or otherwise, free of all restrictions under said trust and of all right, title, and interest of the first party.

The first party also agrees upon the execution of this instrument, to execute a bill of sale to the second party of all the household furniture and two automobiles now kept in their house and/or premises at 1020 Prospect Avenue, Hartford, Connecticut, and to deliver same to said James W. Carpenter, in escrow for future

delivery to said second party upon issuance of said divorce decree; and also to pay off all mortgages and encumbrances on said property, including said real estate, at said latter time.

The first party also agrees to continue for a period of five years from the date of said decree, weekly payments of Forty Dollars ($40) a week, payable each four weeks, to the second party, and in the event that at the end of said period of five years his annual net income, as determined in the manner hereinafter set forth in the third paragraph, but after a further deduction of the 15% thereof provided as a trust for said children, shall exceed by the amount of said weekly payments, the sum of Sixty Thousand Dollars ($60,000) a year, to continue said weekly payments for an additional five (5) years or for such portion thereof as his said net annual income, less the 15% above specified, shall continue by said sum to exceed said sum of Sixty Thousand Dollars ($60,000).

Third. The two parties hereto shall continue to have joint control and custody of their two children, Alfred H. Fuller and Avard E. Fuller until they severally shall obtain their majority. Said children shall have free right to visit the first party, at and for such reasonable times as they or he shall select. The second party shall maintain a home for them and furnish them board and
38 lodging under the trust income heretofore provided. The first party, upon the issue of said divorce decree, agrees immediately thereafter to create an irrevocable trust for the equal benefit of said two children by paying in cash into said trust a sum equal to 15% of his net income for the previous calendar year, except that for the calendar year 1931 said sum, subject to later adjustment on determination of income, shall be Nine Thousand Dollars ($9,000), all to be held in trust by the first party and used by him in the exercise of his sound discretion, as such trustee, in furnishing said children with clothing, education and recreation and all other proper expenses other than a home, board and lodging, until they severally shall reach the age of thirty (30) years.

After the elder child shall reach said age, said trust fund shall be divided and one-half of said trust then unexpended be paid to said elder child to be his absolutely, and the first party shall continue same for 7½% of his said net income until the younger shall reach said age, when the unexpended remainder shall be paid to him to be his absolutely. If either child dies during said period, said trust as to him shall terminate and his unexpended share revert to the first party and the amount to be paid into said trust by the first party shall be reduced one-half. If both children die, then said trust shall terminate and any unexpended portion revert to the first party.

In determining the first party's net income, the amount as reported to the United States Internal Revenue Department for the

previous calendar year, shall control in the first instance, subject to correction and modification under the laws and regulations of the United States relating to income taxation. If said laws shall be repealed, the methods of computing the net income in force at time of repeal shall continue to govern the determination of said net income for the balance of the term of this trust.

Fourth. Both of the parties hereto agree that in consideration of the covenants herein and the performance thereof, they do hereby now and forever waive and surrender all their respective rights, title, and interest in and to the property and estate of the other, now held or hereafter acquired, including the right of support, dower, curtesy, and any other legal rights, if any, which each now has or hereafter might claim in the property of the other, and also all claims which either has or may have against the other on account of their present marital relation, except as otherwise provided in this agreement.

Fifth. In the event that the second party shall not secure her decree of divorce set forth in the first paragraph hereof, then this agreement shall be null and void and all transfers and conveyances or other instruments lodged with said James W. Carpenter or otherwise shall be canceled in the presence of the two parties and returned to the first party.

Sixth. In the event that said trust company shall be unable or unwilling to act or at any time to continue to act as trustee hereunder, the parties hereby agree to nominate some other trust company located in Hartford, satisfactory to them both or upon their failure to so agree upon some trust company, same shall be selected by the Superior Court or a Judge thereof upon application of either party and notice to the other.

Seventh. This agreement shall be binding upon the respective heirs successors, and assigns of the parties hereto.

In witness whereof, the two parties hereto have hereunto agreed and after carefully reading, have set their hands and seals hereto in the presence of each other and in the presence and by advice of their respective counsel, Stewart N. Dunning, and James W. Carpenter, at Hartford, Connecticut, this 25th day of July 1930. This instrument has been executed in triplicate, each copy to be an original, one for the first party, one for the second party, and one to be delivered to said trust company by said James W. Carpenter, if and upon the issue of said divorce decree.

Witness:

STEWART N. DUNNING.
JAMES W. CARPENTER.
ALFRED C. FULLER. [L.S.]
EVELYN W. FULLER. [L.S.]

Exhibit B to stipulation of facts

In the Second Judicial District Court of the State of Nevada, in and for the County of Washoe

No. 33356

EVELYN W. FULLER, PLAINTIFF

vs.

ALFRED C. FULLER, DEFENDANT

Dept. No. 1. Filed: November 12, 1930, at 9:45 o'clock A. M. E. H. Beemer, Clerk. By J. M. Smith, Deputy.

FINDINGS AND DECREE

This cause came on regularly for trial before the Court this twelfth day of November 1930, the plaintiff appearing in person and by her attorney, Robert M. Price, Esq., and the defendant appearing by his attorneys, Messrs. Ayres, Gardiner and
41 Pike. Evidence was offered and received in support of the allegations of the complaint and the Court, after duly considering the same and the files in this action, finds:

I

That the plaintiff is now and for more than three months prior to the commencement of this action has been a bona fide resident of the County of Washoe, State of Nevada, and had been physically present and domiciled, during all of said period, in the City of Reno therein.

II

That the defendant and the plaintiff intermarried on the eighth day of April 1908 in the City of Somerville, State of Massachusetts, and that they ever since have been and were at the time of the trial of this action husband and wife.

III

That there are two children the issue of said marriage. Alfred H. Fuller, aged seventeen years, and Avard E. Fuller, aged fourteen years.

IV

That there is no community property belonging to the plaintiff and the defendant in the State of Nevada or elsewhere.

V

That the cause of action set forth in the plaintiff's complaint has been established by material and competent evidence and that all of the allegations of the plaintiff's complaint are true and that the plaintiff is entitled to a decree of divorce.

42

VI

That the plaintiff and the defendant have heretofore on or about the twenty-fifth day of July 1930 entered into a written agreement for the custody and support of said minor children, for the support of the plaintiff and in settlement of the property rights of the plaintiff and the defendant.

VII

That the defendant has waived notice of the decision of the Court, and the service of the findings and decree.

Wherefore, by reason of the law and the findings aforesaid, it is

Ordered, adjudged, and decreed that the plaintiff be, and she hereby is, granted a divorce from the bonds of matrimony existing between the plaintiff and the defendant and that said parties be and they hereby are restored to the status of single persons.

It is further ordered, adjudged, and decreed that said agreement entered into between the plaintiff and the defendant on or about the twenty-fifth day of July 1930 be and the same hereby is approved.

Done in open court this twelfth day of November 1930.

THOMAS F. MORAN,
District Judge.

43 In the Second Judicial District Court of the State of Nevada, in and for the County of Washoe

No. 33356

EVELYN W. FULLER, PLAINTIFF

vs.

ALFRED C. FULLER, DEFENDANT

I, E. H. Beemer, County Clerk and ex officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that I have compared the foregoing with the original thereof, and that I am

the keeper of all said original, keeping same on file in my office as the legal custodian, and keeper of the same under the laws of the State of Nevada, and I further certify that the foregoing copy, attached hereto is a full, true, and correct copy of the findings and decree, and now on file and of record in my office.

I do further certify that the same has not been altered, amended, or set aside, but is still of full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the said Court this 12th day of November A. D. 1930.

(Sgd.) E. H. BEEMER,
County Clerk.

I, Thomas F. Moran, one of the Presiding Judges of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that said Court is a Court of Record, having a Clerk and a Seal; and that there is no provision by law for a chief judge or presiding magis-
44 trate thereof, that both of said two judges are placed by law on an equality as to authority; that E. H. Beemer, who has signed the annexed attestation, is the duly elected and qualified County Clerk of the County of Washoe, and was at the time of signing said attestation, ex officio Clerk of said Court.

That said signature is his genuine handwriting, and that all of his official acts as such Clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

Witness my hand this 12th day of November A. D. 1930.

(Sgd.) THOMAS F. MORAN,
One of the Presiding Judges of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

STATE OF NEVADA,
County of Washoe, ss:

I, E. H. Beemer, County Clerk and ex officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that the Honorable Thomas F. Moran, whose name is subscribed to the preceding Certificate, is one of the Presiding Judges of said Court, duly elected and qualified, and that the signature of said Judge to said Certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court this 12th day of November A. D. 1930.

(Sgd.) E. H. BEEMER,
County Clerk and ex officio Clerk of the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

45 *Exhibit C to stipulation of facts*

This Agreement made this 22nd day of December 1930, by and between Alfred C. Fuller, of Hartford, Connecticut, Evelyn W. Fuller of said Hartford, and The Hartford-Connecticut Trust Company of said Hartford, hereinafter designated as the "First," "Second," and "Third" parties, respectively, witnesseth:

Whereas, under date of July 25, 1930, said Alfred C. Fuller and Evelyn W. Fuller entered into an agreement concerning various matters of mutual interest and importance and as a part of said agreement arranged for the holding of certain property as a trust fund, and for the disposal or accumulation of the income thereof for trust purposes as hereinafter set forth;

Whereas, said The Hartford-Connecticut Trust Company was not a party to said Agreement dated July 25, 1930, but has since accepted said trust and agreed to execute the same in accordance with the mutual undertakings and obligations of the parties;

Now therefore, in order to reaffirm the terms of said agreement, to state the rights and obligations of the third party, and to effectuate the aforesaid agreement, the said three parties agree as follows:

First. The trust created by the aforesaid agreement and confirmed by this is to continue for a period of ten (10) years from the 12th day of November 1930, regardless of any change which may hereafter be made or occur in the present trustees, beneficiary, or principal of said trust.

46 Second. The first party agrees to cause and direct the transfer forthwith from him personally to him as Trustee upon the books of The Fuller Brush Company of sixty thousand three hundred eighty (60,380) shares of common capital stock, Class A, of The Fuller Brush Company, consisting of Certificates #333 for 25,000 shares; #334 for 10,000 shares; #335 for 10,000 shares; #337 for 5,000 shares; #338 for 5,000 shares; #339 for 2,000 shares; #340 for 2,000 shares; #341 for 1,000 shares; and #1326 for 380 shares, to be held by him in trust, for the purposes hereinafter specified, except that immediately upon the said transfer the said certificates of stock shall be delivered to and held by

the third party for the trust period, except as otherwise provided herein, to be held by it in escrow for the purposes of said trust, together with a power of attorney running to it to transfer the same for said trust purposes.

Third. The said stock shall be held in trust by the first party, the possession thereof being vested in the third party as above set forth, for said period, for the maintenance and support of the second party, or in case of her death during said period, then for the maintenance and support of the two sons of the first and second parties, Alfred H. Fuller and Avard E. Fuller, or the survivor thereof, or in case of the death of both of said sons during said period, and in the absence of any valid testamentary disposal thereof by the second party, then for the maintenance and support of the heirs of the second party, being those persons who, under the laws of Connecticut, in force on July 25, 1930, would receive her own intestate estate. If, however, the second party and the two said sons should die during said period, but the second party should make a valid testamentary disposal thereof, then the
47 said trust fund shall be disposed of in accordance therewith, but only at the expiration of said period. During said period the first party shall have exclusive voting power on said stock so long as he lives, and upon his death during said period, said power shall vest in the second party. During said period the power of selling said stock shall be vested jointly in the first, second, and third parties as trustees, said power to be exercised only in case all three agree in writing thereto. In case of such a sale, the three parties as trustees, are to have the power during said period of investing and reinvesting the proceeds thereof and holding the same as principal for the trust purposes herein set forth. The three parties, as trustees, shall have the power during said period of disbursing, withholding, and accumulating the principal of said trust at their sole discretion, it being the intent of the first and second parties to create a spendthrift trust as to said principal for the benefit of the second party, the said sons, and the testamentary beneficiaries, or the heirs of the second party. The trustees' power of investment is limited and governed by laws of the State of Connecticut in force and effect on November 12, 1930.

Fourth. All the income, dividends, rights, and emoluments from said stock shall, during said period, be paid or transferred when payable or transferable, to the third party, and the same shall be held by it and the second party as Trustees for the maintenance and support of the second party, or in case of the death of the second party during said period, then for the maintenance and support of the two said sons or the survivor

thereof, or in case of the death of both of said two sons during said period, and in the absence of any valid testamentary disposal thereof by the second party, then for the maintenance and support of the heirs of the second party, being those persons who under the laws of Connecticut, in force on July 25, 1930, would receive her own intestate estate. If, however, the second party and the two said sons should die during said period, but the second party should make a valid testamentary disposal thereof, then the said income shall be disposed of in accordance therewith. The second and third parties shall have the power during said period to withhold, accumulate, invest, and reinvest said income in whole or in part, at their sole discretion, it being the intention of the first and second parties to create a spendthrift trust as to said income for the benefit of the second party, the said sons and the testamentary beneficiaries, or the heirs of the second party.

Fifth. At the expiration of such period of ten years, the trust shall terminate and the principal thereof, together with all accumulated dividends, interest, rights, and income not previously paid by the trustees as herein provided shall become the absolute property of said Evelyn W. Fuller and shall be transferred and paid over to her in outright ownership free from said trust, or as provided in her will, in case of her prior death, or in case of her prior death without a valid testamentary disposal thereof, then to her heirs, being those persons who, under the laws of Connecticut, in force on July 25, 1930, would receive her own intestate estate.

Sixth. In case the third party shall at any time be unable or unwilling to continue to act as trustee hereunder, it is agreed that the first and second parties will unite in nominating some other trust company located in Hartford and satisfactory to them both as successor trustee to said The Hartford-Connecticut Trust Company, and upon their failure to so agree upon some trust company the same shall be selected by the Superior Court, or a judge thereof, upon application of either said first two parties and notice to the other.

Seventh. If either of the first two parties should die during said period, then the trust duties in respect to the principal of said trust shall be performed by the survivor and the third party or its successor, but if both the first and second parties should die during said period, then such duties shall be performed by the third party or its successor. If the second party should die during said period, then the trust duties in respect to the income shall be performed by the third party or its successor. Such surviving trustee or trustees shall have full power to make

all the distributions or divisions required by the terms of this Agreement, including the allocation of items to respective shares and the determination of the value of such items at the time of distribution and the consequent value at which the items shall be set out into the respective shares.

Eighth. Said third party shall be entitled to a reasonable compensation for its services as trustee hereunder, such compensation to be charged against the income of the trust and not to be charged against the principal thereof unless there is no income available for the purpose. Such compensation is hereby estimated at two percent of the income received and collected by said trustees for so long a period as the operations of the trust continue to be substantially as now contemplated. In case of any failure to agree to the appropriateness of any supplemental charge which may be proposed to be made by the third party, the amount of proper charge may be adjudicated by the Superior Court aforesaid, or a judge thereof, upon the application of either trustee or any beneficiary.

50 In witness whereof, the parties hereto have hereunto set their hands and seals, in triplicate, the third party causing these presents to be executed by Charles C. Russ, Vice President thereunto duly authorized.

ALFRED C. FULLER. [L. S.]
EVELYN W. FULLER. [L. S.]
THE HARTFORD-CONNECTICUT TRUST CO.
By CHARLES C. RUSS, *Vice President.*

Witnesses:
VIRGINIA M. KELLY,
STEWART N. DUNNING,
As to A. C. F.
HELEN G. ULRICH,
JAMES W. CARPENTER,
As to E. W. F. and C. C. R.

FIELD WASHINGTON

INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1931

Connecticut

MAR 15 1932

Cashier D

1771.56

Name: LEROY C. FULLER

Address: 184 Fern Street

West Hartford, Hartford, Connecticut

Occupation: President-The Fuller Brush Company

1. Are you a citizen or resident of the United States? Yes
   If you filed a return for 1930 to what Collector's office was it sent? Hartford
   Is this a joint return of husband and wife? No
2. State name of husband or wife if a separate return was made and the Collector's office where it was sent: ----
3. Were you married and living with husband or wife on the last day of your taxable year? No
4. If not, were you on that day of your taxable year divorced or in your husband's or wife's home or home of your family relieved to you? no
7. If your status in regard to exemptions 3 and 6 changed during the year, state date and nature of change. ----
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? One

INCOME

1. Salaries, Wages, Commissions, etc. (Give amount withheld at source)			
Fuller Brush Company		25 000	
President's Fees		250	
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		814	53
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source	2784		
5. Income from Partnerships. (Give amount gained)			
6. Income from Fiduciaries. (From Schedule B)			
7. Rents and Royalties. (From Schedule C)			
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule D)		11 805	37
10. Dividends on Stock of Domestic Corporations		88 443	05
11. Other Income (including dividends on stock of foreign corporations). (Give amount of income)			
(a)			
(b)			
12. TOTAL INCOME IN ITEMS 1 TO 11			88 062 11

DEDUCTIONS

13. Interest Paid		18 108	87
14. Taxes Paid. (Deductible Schedule F)		2	
15. Losses by Fire, Storm, etc. (Explain in letter and Schedule G)			
16. Bad Debts. (Explain in Schedule F)			
17. Contributions. (Explain in Schedule F)		4 047	
18. Other Deductions Authorized by Law. (Explain in Schedule F)			
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18			22 354 87
20. NET INCOME (Item 12 minus Item 19)			65 627 24

EARNED INCOME CREDIT | COMPUTATION OF TAX (See Instruction 22)

INCOME

		Amount received	Deduct amt. not taxable	
1. Salaries, Wages, Commissions, etc. (Give name and address of employer)				
Public Bank Company			25 000	
Treasurer's Fees			220	
2. Income from Business or Profession. (From Schedule A)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			814	03
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source				
5. Income from Partnerships. (Give name and address)				
6. Income from Fiduciaries. (Give name and address)				
7. Rents and Royalties. (From Schedule B)				
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			11 805	17
9. Taxable Interest on Liberty Bonds, etc. (See Schedule F)				
10. Dividends on Stock of Domestic Corporations			82 443	05
11. Other Income (including dividends on stock of foreign corporations). (Give nature of income)				
(a)				
(b)				
12. TOTAL INCOME IN ITEMS 1 TO 11				60 052 11

DEDUCTIONS

13. Interest Paid		18 106	97
14. Taxes Paid. (Detail in Schedule F)		2	
15. Losses by Fire, Storm, etc. (Explain in this or next space)			
16. Bad Debts. (Explain in Schedule F)			
17. Contributions. (Explain in Schedule F)		4 247	
18. Other Deductions Authorized by Law. (Explain in Schedule F)			
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18			22 354 87
20. NET INCOME (Item 12 minus Item 19)			37 697 24

EARNED INCOME CREDIT

21. Earned Income (not over $30,000) Less Personal Exemption and Credit for Dependents	30000 / 1800	
Balance (Item 21 minus 22)	28100	
24. Amount taxable at 1½% (not over $4,000)	4000	
25. Amount taxable at 3% (not over $4,000)	4000	
26. Amount taxable at 4% (Balance over $8,000 of Item 24)	20100	
27. Normal Tax (1½% of Item 24)	60	
28. Surtax (3% of Item 25)	120	
29. Normal Tax (4% of Item 26)	1050	
30. Surtax on Item 26	880	
31. Tax on Earned Net Income (Total of Items 27 to 30)	2110	
32. Credit of 25% of Tax (not over 75% of Items 27, 28, 29 and 30)	1000	

COMPUTATION OF TAX (See Instruction 32)

33. Net Income (Item 20 above)		37697	24
34. Liberty Bond Interest (Item 9)			
35. Dividends (Item 10)	32992 05		
36. Credit for Dependents	400		
37. Personal Exemption	1800		
38. Total of Items 34 to 37		34835	05
39. Balance (Item 33 minus 38)		0	
40. Amount taxable at 1½% (not over $4,000)		0	
41.		0	
42. Balance (Item 39 minus 40)		0	
43. Amount taxable at 3% (not over $4,000)		0	
44. Amount taxable at 4% (Item 42 minus Item 43)		0	
45. Normal Tax (1½% of Item 40)		0	
46. Normal Tax (3% of Item 43)		0	
47. Surtax on Item 39 (see Instruction 32)		4991	50
48. Tax on Net Income (Total of Items 45 to 47)		4031	50
49. Tax on Net Income (Item 48 minus Item 31) or Less (Item 31 of Sch. B and D)		0	
50. Tax on Net Income (Item 48 minus Item 49)		4031	50
51. Less Credit of 20% of Tax on Earned Income (Item 32)		200	
52. Total Tax (Item 50 minus 51)		4771	50
53. Less Income Tax Paid at Source		0	
54. Income Tax Paid to a foreign country or U. S. possession		0	
55. Balance of Tax (Item 52 minus Items 53 and 54)		4771	50

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1918 and the Regulations issued thereunder.

See Instruction 37

Sworn to and subscribed before me this 14 day of May, 1919.

Ford C. Fuller

L. W. Watson Notary Public 184 Main St. Hartford Conn

(Signature of officer administering oath) (Title) (Residence or office)

NOTARIAL SEAL

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable to the order of

J-1

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 3)

1. Total receipts from business or profession (State kind of business)

Gross or Gross Sales	
1. Labor	
2. Material and supplies	
3. Merchandise bought for sale	
4. Other costs (Itemize below or on separate sheet)	
5. Plus inventory at beginning of year	
6. Total (Lines 2 to 5)	
7. Less inventory at end of year	
8. Net Cost or Gross Sales (Line 6 minus Line 7)	

Enter "C," or "C or M," on Lines 3 and 7 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Gross Deduction Disallowed	
10. Salaries not included on "Labor," in Line 2. (Do not deduct compensation for yourself here)	
11. Interest on business indebtedness to others	
12. Taxes on business and business property	
13. Losses (explain in detail at foot of page)	
14. Bad debts arising from sales or services	
15. Depreciation, obsolescence, and depletion (See Note in table provided at foot of page)	
16. Rents, royalties, and other expenses (Itemize below or on separate sheet)	
17. Total (Lines 10 to 16)	
18. Total Deductions (Line 9 plus Line 17)	
19. Net Profit (Line 1 minus Line 18) (Enter on Page 2)	

Explanation of deductions claimed on Lines 8 and 15:

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind or Property	2. Amount Received	3. Cost or Value as of March 1, 1913, if Acquired Before That Date	4. Depreciation Allowed Since March 1, 1913	5. Deductible Expenses	6. Gross Income (Deduct Loss)	7. Net Profits (Enter on Page 2)

Explanation of deductions claimed in Column 5:

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Realized	4. Deductible Amounts Since Acquisition	5. Cost or Value as of March 1, 1913, if Acquired Before That Date	6. Expenditures for Improvements, and Total Deductions	7. Net Profits (Enter on Page 2)

Basis here (property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Deductible Amounts Since Acquisition	6. Cost or Value as of March 1, 1913, if Acquired Before That Date	7. Expenditures for Improvements, and Total Deductions	8. Net Gain or Loss (Enter Gain on Page 2)
	30th day Prior	30th day Prior					

Basis here (property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Description or Amount	2. Interest Received or Accrued	3. Amount Owned	4. Fourth Liberty Loan Converted Bonds	5. Amount Owned at Time of Conversion	6. Interest on Amount of Bonds at Time of Conversion (Enter on Page 2)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All		
(b) Bonds issued under Federal Farm Loan Act, or under such Act as Amended, Treasury Bills, and Treasury Certificates of Indebtedness			All		
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All		
(d) Liberty 4% and 4½% Bonds, Treasury Bonds, and Treasury Savings Certificates			$1,000		
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

53 ALFRED C. FULLER

SCHEDULE C—PROFIT FROM SALE OF STOCKS

Kind of property	Date acquired	Amount received	Cost	Profit loss
100—Aetna Life	Aug. 14, 1931	$1,999.80	$4,600.00	$2,600.20
100—Electric Bond & Share	Aug. 14, 1931	1,632.93	3,902.50	2,869.57
1½— " " "	Oct. 1, 1931			
100—General Motors	Aug. 14, 1931	2,249.60	3,865.00	1,615.40
100—Borden	Aug. 14, 1931	3,684.00	6,005.00	2,321.00
100—N. Y., N. H. & H. R. R.	Aug. 15, 1931	2,793.50	5,992.50	3,199.00
		$11,759.83	$24,365.00	$12,605.17

Acquired by Purchase.
F. 3.

54 ALFRED C. FULLER

SCHEDULE F—ITEM 17—CONTRIBUTIONS

Hartford Community Chest	$1,500.00
Second Church of Christ Scientist, Hartford	400.00
Western Kings Co. Memorial Hospital	500.00
United Church Camp Meeting Assn	475.00
Exchange Club Relief Fund	125.00
American Red Cross	100.00
Conn. Sunday School Association	100.00
Acadia University	100.00
International Y. M. C. A. College	100.00
Conn. Children's Aid Society	100.00
Northfield Schools	250.00
Times Warner Unemployment Fund	10.00
A.M.E. Zion Church	25.00
The Gideons	10.00
Gaylord Sanitorium	25.00
Village Street Mission	6.00
Children's Museum of Hartford	25.00
Conn. Federation of Churches	50.00
Grotto Benefit Fund	3.00
Salvation Army	50.00
Y. M. C. A.	12.00
Junior Achievement Inc	50.00
National Probation Assn	50.00
Country Life Academy	25.00
Conn. Humane Society	50.00
Newington Home	50.00
National Recreation Assn	10.00
Hartley-Salmon Clinic	10.00
New England Council	25.00
Hartford Tuberculosis Society	1.00
Wadsworth Athenium	10.00
Total item #17	$4,247.00

ITEM 14—TAXES

City of Hartford	2.00

F. 4.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, if Acquired Prior Thereto	4. Depreciation Allowed (Section 12(a))	5. Taxes	6. Other Expenses (Describe below)	7. Net Profit (Enter on Line 9)
	$	$	$	$	$	$

Explanation of deductions claimed in Column 6

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Realized	4. Expenditures Added to Cost Subsequent to March 1, 1913	5. Cost or Value as of March 1, 1913, if Acquired Prior Thereto	6. Depreciation Sustained	7. Net Profit (Enter on Line 9)
		$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9)

1. Kind of Property	2. Date Acquired (Mo. Day Yr.)	3. Date Sold (Mo. Day Yr.)	4. Amount Realized	5. Expenditures Subsequent to March 1, 1913	6. Cost or Value as of March 1, 1913, if Acquired Prior Thereto	7. Depreciation Sustained (Section 12(a))	8. Net Gain or Loss (Enter Item on Line 9)
			$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations in Schedule	2. Interest Received or Accrued	3. Amount Owned	4. Amount Exempt Under Treaty with Foreign Country	5. Amount Owned on Which Exemption Is Claimed	6. Interest on Amount of Bonds or Securities (Enter on Line 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$			
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness					
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions					
(d) Liberty 4%, and 4½% Bonds, Treasury Bonds, and Treasury Savings Certificates					
(e) Treasury Notes					

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

Classification and Rate of Each Item Depreciated	1. Date Acquired	2. Cost or Other Basis	3. Depreciation Sustained Since Acquired	4. Cost or Value as of March 1, 1913, if Acquired Prior Thereto	Amount of Depreciation Claimed on 5. Previous Years	Amount of Depreciation Claimed on 6. This Year
		$	$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 15

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, if Acquired Prior Thereto	4. Depreciation Sustained	5. Expenditures Added to Cost Subsequent to March 1, 1913	6. Insurance and Salvage Value	7. Deductible Loss
		$	$	$	$	$

F 2

TREASURY DEPARTMENT
Internal Revenue Service

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1932

For The Period From Jan. 1st Calendar Year or Fiscal Period to Year Ended or ... March 31, 1933

PRINT NAME AND ADDRESS PLAINLY BELOW

Alfred C. Fuller
(Given and middle name or initial) (Family name)
38 Cedarcrest Rd.
(Number and street, or rural route)
West Hartford Hartford Connecticut
(Post office) (County) (State)

Occupation, Business, or Profession President - Fuller Brush Co.

Do Not Write in These Spaces

File No. 25

Serial Number

District Connecticut
(Collector's District)

Received MAR 15 1933

Cash Check M.O. Cert. of Ind.
Form Prepared

Ack.

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1931, to what Collector's office was it sent? Hartford
3. Is this a joint return of husband and wife? Yes
4. State name of husband or wife if a separate return was made and the Collector's office to which it was sent
5. State whether your books are kept on cash or accrual basis. Cash Basis
6. Were you married and living with husband or wife on the last day of your taxable year? Yes
7. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
8. How many dependent persons (all or than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year? One
9. If your answer in response to question 3, 6, or 7 changed during the year, state date and nature of change Yes-Married Oct. 21, 1932.

ATTACH SCHEDULES HERE

INCOME						
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)						
The Fuller Brush Company		35	000			
West Hartford Finance Company		4	000			
2. Income from Business or Profession. (From Schedule 4)						
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free government bonds)			384	74		
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			9		9	24
5. Income from Partnerships, Syndicates, Pools, etc. (State name and address)						
6. Income from Fiduciaries. (State name and address)						
7. Rents and Royalties. (From Schedule B)						
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)						
9. Taxable Interest on Liberty Bonds, etc. (From Schedule E)						
Dividends on: (a) Stock of Domestic Corporations subject to taxation under Title I of 1932 Act		36	478			
(b) Stock of Domestic Corporations not subject to taxation under Title I of 1932 Act						
(c) Stock of Foreign Corporations						
11. Other Income. (State nature of income)						
(a)						
(b)						
12. TOTAL INCOME IN ITEMS 1 TO 11					79	812 74
DEDUCTIONS						
13. Interest Paid		18	192	94		
14. Taxes Paid. (Explain in Schedule F)			16	02		
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)						
16. Bad Debts. (Explain in Schedule F)						
17. Contributions. (Explain in Schedule F)		3	140			
18. Other Deductions Not Reported Above. (Explain in Schedule F)		53	415			
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18					74	763 96
20. NET INCOME (Item 12 minus Item 19)					1	048 78
21. Less: Net loss for 1931 (Submit Schedule)						0
NET INCOME FOR TAX COMPUTATION (Item 20 minus Item 21)					1	048 78

INCOME

1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)							
The Fuller Brush Company				35	000		
West Hartford Finance Company				4	000		
2. Income from Business or Profession. (Name business)							
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)					384	74	
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source							
5. Income from Partnerships, Syndicates, Pools, etc. (State name and address)					9		9
6. Income from Fiduciaries. (State name and address)							
7. Rents and Royalties. (From Schedule B)							B
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)							
9. Taxable Interest on Liberty Bonds, etc. (From Schedule D)							
Dividends on: (a) Stock of Domestic Corporations subject to taxation under Title I of 1928 Act				36	478		
(b) Stock of Domestic Corporations not subject to taxation under Title I of 1928 Act							
(c) Stock of Foreign Corporations							
11. Other Income. (State nature of income)							
(a)							
(b)							
12. Total Income in Items 1 to 11							29 812 74

DEDUCTIONS

13. Interest Paid			18	192	94	
14. Taxes Paid (Schedule F)				16	02	
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 3)						
16. Bad Debts. (Explain in Schedule F)						
17. Contributions. (Explain in Schedule F)			3	140		
18. Other Deductions Not Reported Above. (Explain in Schedule F)			53	415		
19. Total Deductions in Items 13 to 18						74 763 96
20. Net Income (Item 12 minus Item 19)						1 049 78
21. Less: Net loss for 1931 (Return Schedule)						0
Net Income for Tax Computation (Item 20 minus Item 21)						1 049 78

COMPUTATION OF TAX (See Instruction 32)

23. Net Income Subject to Tax (From Schedule)			1 049 78	32. Normal Tax (4% of Item 23)	
24. Less: Interest on Liberty Bonds, etc. (Item 9)				34. Normal Tax (8% of Item 33)	
25. Dividends (Item 10 (a))	36 478			35. Surtax on Item 23 (See Instruction 33)	
26. Personal Exemption	1 500			36. Total Net Income (Item 23 minus Item 24)	
27. Credit for Dependents	400			37. Adjustment for Capital Gain or Loss (Item 28 or Item 29)	
28. Total (Items 24 to 27)		38 128		38. Total Tax (Items 32 and 37)	
29. Balance subject to Normal Tax (Item 23 minus Item 28)				39. Less: Income Tax Paid at Source (4% of Item 23)	
30. Amount taxable at 4% (4% of Item 29)				40. Income Tax Paid to a Foreign Country or U. S. possession	
31. Amount taxable at 8% (8% of Item 29)				41. Balance of Tax (Item 38 minus Item 39)	
32. Amount of Capital Net Gain or Loss (From Schedule D)					

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief is a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the regulations issued thereunder.

(See Instruction 37) (If return is made by agent, the power must be filed on this form)

Sworn to and subscribed before me this 14 day of March, 1933

Fred S. Fuller

(Signature of officer administering oath) (Title) (Address of officer)

NOTARIAL SEAL

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par.

75

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 3)

1. Total receipts from business or profession (study third of business) ..... $

Cost of Goods Sold		Other Deductions Claimed	
2. Labor	$	10. Salaries and wages (other than "Labor" on Line 2. (Do not deduct compensation for your services)	$
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (Itemize below or on separate sheet)		13. Losses (explain in detail at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. TOTAL (Lines 2 to 6)	$	15. Depreciation, obsolescence, and depletion (explain in detail provided at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (Itemize below or on separate sheet)	
9. NET COST OF GOODS SOLD (Line 7 minus Line 8)	$	17. TOTAL (Lines 10 to 16)	$
		18. TOTAL DEDUCTIONS (Line 9 plus Line 17)	$
		19. NET PROFIT (Line 1 minus Line 18). (Enter on Page 2)	$

Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed on Lines 5 and 16 .....

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, of Buildings Claimed	4. Depreciation (Answer in case as foot of page)	5. Remarks	6. Gross Income (Col. 2 plus Col. 3)	7. Net Profit (Col. 6 less Col. 4)
	$	$	$		$	$

Explanation of deduction claimed in Column 4 .....

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Realized	4. Cost	5. March 1, 1913, Value (If Acquired Prior to That Date)	6. Cost or Interest Value (Col. 4 or Col. 5)	7. Depreciation Allowed (or Allowable) Since March 1, 1913	8. Net Profit or Loss (Item 3 less Item 7)
		$	$	$	$	$	$

State how property was acquired .....

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Cost	6. March 1, 1913, Value (If Acquired Prior to That Date)	7. Cost or Interest Value (Col. 5 or Col. 6)	8. Depreciation Allowed (or Allowable) Since March 1, 1913	9. Net Gain or Loss (Item 4 less Item 8)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired .....

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Period Above Interest Was Taxable	5. Amount Owned at Close of Year	6. Interest on Amount at Rate of Exemption (Enter on Line 6)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness			All	XXXXXX	XXXXXX
(c) Liberty 3½%, Panama and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			All	XXXXXX	XXXXXX
(e) Treasury Notes			All	XXXXXX	XXXXXX

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 15, 17, AND 18

57 ALFRED C. FULLER

SCHEDULE F—Item #14—Taxes

Town of West Hartford	$11.62	
Tax on Bank Checks	4.40	
Total Item #14		16.02

ITEM #17—CONTRIBUTIONS

Hartford Community Chest	$1,850.00	
Second Church of Christ, Scientist	450.00	
United Church of Berwick	300.00	
Connecticut Children's Aid	100.00	
Y. M. C. A. World Service	100.00	
Conn. Federation of Churches	50.00	
American Legion	50.00	
Conn. Sunday School Association	50.00	
Gaylord Farm Association	25.00	
Children's Museum	25.00	
A. M. E. Zion Church	25.00	
American Red Cross	15.00	
Shiloh Baptist Church	15.00	
Y. M. C. A.	12.00	
Wadsworth Atheneum	10.00	
Fuller Benefit Show Fund	10.00	
The Gideons	10.00	
National Recreation Association	10.00	
Near East Foundation	10.00	
Shrine Circus Fund	10.00	
City Hospital Children's Fund	10.00	
Mt. Sinai Hospital	3.00	
Total Item #17		3,140.00

ITEM #18—OTHER DEDUCTIONS

Capital Stock ownership in The City Bank & Trust Company, Hartford, Connecticut, declared worthless in 1932—acquired per schedule attached.
F. 7.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind or Property	2. Amount Received	3. Cost or Value of Land, Buildings, and Equipment (See Instruction 8)	4. Depreciation (Section 23 (l) or (m)) as per page	5. Remarks	6. Net Income or Loss (Column 2 minus Columns 3, 4, and 5)	7. Net Income, as Adjusted (See Instruction 9)
	$	$	$		$	$

Explanation of deductions claimed in Column 6 _____

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind or Property	2. Date Acquired	3. Amount Received	4. Cost	5. March 1, 1913, Value (If Acquired Prior to That Date)	6. Cost or Interest (Same Computation as Column 4, Less Column 5, if Any)	7. Depreciation Allowed (or Allowable) Since Acquisition (Same as Column 6, if Any)	8. Net Profit or Loss (Column 3 minus Column 6)
		$	$	$	$	$	$

State how property was acquired _____

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Cost	6. March 1, 1913, Value (If Acquired Prior to That Date)	7. Cost or Interest (Same Computation as Column 5, Less Column 6, if Any)	8. Depreciation Allowed (or Allowable) Since Acquisition (Same as Column 7, if Any)	9. Net Gain or Loss (Column 4 minus Column 7, Plus Column 8)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired _____

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Periods Accrued (Interest Paid Yearly, Quarterly, etc.)	5. Amount Owned at Close of Taxable Year	6. Interest on Bonds or Securities (Entry in Column 3)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	$	$
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness			All		
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All		
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			All		
(e) Treasury Notes			All		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If Buildings, State Material of Which Constructed)	2. Date Acquired	3. Age When Acquired	4. Periods Last Added	5. Cost (Including Cost of Land)	6. March 1, 1913, Value (If Acquired Prior to That Date) (Including Cost of Land)	7. Depreciation Allowed (or Allowable) Since Acquisition (Same as Column 6, if Any)	8. Depreciation Allowed Since That Time
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 18

1. Kind of Property	2. Date Acquired	3. Cost or Value of Land, Buildings, and Equipment (See Instruction 8)	4. Depreciation	5. Depreciation Allowed (or Allowable) Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss
		$	$	$	$	$

58 ALFRED C. FULLER

THE CITY BANK AND TRUST COMPANY STOCK

Date	From whom purchased	Number of shares	Price per share	Amount
6, 1920	F. P. Holt	5	246	$1, 23
Jan. 21, 1921	Adams, Merrill & Company	5	252	1, 26
Nov. 2, 1923	Thomson, Fenn & Company	2	305	61
Jan. 2, 1924	Stock Increase (1/6)	2	100	20
Dec. 18, 1924	Conning & Company	14	395	5, 53
Dec. 18, 1924	F. P. Holt (Rights)			56
Jan. 2, 1925	Stock Increase (1/7)	4	100	40
Jan. 2, 1926	" " (1/8)	4	100	40
Jan. 3, 1927	Stock Dividend (1/9)	4	0	
Dec. 13, 1927	F. F. Small	20	830	16, 60
	Total	60	$446.50	$26, 79
Sept. 15, 1929	Exchanged for new Stock—Par Value $25	240	111.63	26, 79
Dec. 30, 1930	City Bank & Trust Company	118	225	26, 55
June 15, 1931	" " " "	1	150	15
July 9, 1931	" " " "	1	150	15
	Total	359	$148.79	$53, 41

Certificates as follows:

#A-1092	100 shares
A-1093	100 "
A-1094	40 "
A-2152	17 "
A-2162	100 "
A-2590	1 "
A-2644	1 "
Total	359 shares

F. 8.

TREASURY DEPARTMENT

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $3,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1933

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1934

PRINT NAME AND ADDRESS PLAINLY BELOW

Do Not Write in These Spaces

No. 751

Serial No. 200279

Connecticut

1933 5,320.30

PAID

MAR 14 1934

ALFRED G. FULLER

32 Colony Road

West Hartford (Town or city) Hartford (County) Connecticut (State)

1. Are you a citizen or resident of the United States? Yes
2. If you have changed your name since filing your last return, state former name. —
3. Are you married and living with husband or wife? Yes
4. If married, is husband or wife living with you? Yes
5. If married, and husband or wife is living with you, give his or her name and address. Hartford
6. If married, and husband or wife is living with you, give his or her occupation. —
7. Did husband or wife receive gross income of $1,000 or more during the taxable year? —
8. If husband or wife has separate income, state amount. —
9. Number of children under 18 years of age, or incapable of self-support because mentally or physically defective, dependent upon you for chief support during taxable year. One
10. If not married or living apart from husband or wife, state whether single or widowed. —
11. Are you claiming credit for dividends received? No
12. Are you claiming credit for interest received? Yes
13. Are your books kept on the cash receipts and disbursements basis? Cash
14. Are your books kept on the accrual basis? —
15. Are you employed by the United States, a State, a County, a City, or any political subdivision thereof? —
16. If so, what is your official title? —
17. Are you engaged in the practice of law, medicine, dentistry, engineering, architecture, accountancy, or other profession? —
18. If so, what is your profession? —
19. Are you an officer of a corporation? —
20. If so, what is your official title? —
21. Are you engaged in business? —
22. If so, what is your business? —
23. Are you a member of a partnership? —
24. If so, what is your business? —
25. Are you a beneficiary of a trust? —
26. If so, what is your business? —
27. Are you a member of a joint venture? —
28. If so, what is your business? —
29. Are you a member of a syndicate? —
30. If so, what is your business? —
31. Are you a member of a joint account? —
32. If so, what is your business? —
33. Are you a member of a joint stock company? —
34. If so, what is your business? —
35. Are you a member of a joint stock association? —
36. If so, what is your business? —
37. Are you a member of a joint stock corporation? —
38. If so, what is your business? —
39. Are you a member of a joint stock company? —
40. If so, what is your business? —
41. Are you a member of a joint stock association? —
42. If so, what is your business? —
43. Are you a member of a joint stock corporation? —
44. If so, what is your business? —
45. Are you a member of a joint stock company? —
46. If so, what is your business? —
47. Are you a member of a joint stock association? —
48. If so, what is your business? —
49. Are you a member of a joint stock corporation? —
50. If so, what is your business? —

INCOME

1. Salaries, Wages, Compensation, Fees, etc. (Name each and address of employer) Fuller Brush Company, Hartford, Conn.		$ 32 500 00
2. Income (or Loss) from Business or Profession (From schedule A)		
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds) (From kind of business)		302 50
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Name, address, and kind of business)		
6. Income from Fiduciaries. (Name and address)		
7. Rents and Royalties. (From Schedule B)		
8. (a) Profit from Sale of Stocks and Bonds held two years or less. (From Schedule C III)		
(b) Profit or Loss from Sale of Other Assets held two years or less. (From Schedule C III)		
(c) Profit or Loss from Sale of Capital Assets (if not reported as Item 30). (From Schedule C IV)		
9. Taxable Interest on Liberty Bonds, etc. (From Schedule D)		
10. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1932 Act		21 158 75
(b) Domestic Corporations not subject to taxation under Title I of 1932 Act		
(c) Foreign Corporations		
11. Other Income. (From sources) (Use separate schedule, if necessary)		
12. TOTAL INCOME IN ITEMS 1 TO 11		$ 53 855 25

DEDUCTIONS

13. Interest Paid	$ 2 545 67	
14. Taxes Paid: (Explain in Schedule E)	1 203 88	
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 3)		
16. Bad Debts. (Explain in Schedule E)	3 701 70	
17. Contributions. (Explain in Schedule E)	2 600 00	
18. Other Deductions Authorized by Law. (Explain in Schedule E)		
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18		$ 10 051 25
20. NET INCOME (Item 12 minus Item 19)		$ 43 804 00

INCOME

1. Salaries, Wages, Commissions, Fees, etc. (Name and address of employer) Fuller Brush Company, Hartford, Conn.		32 500 00
2. Income (or Loss) from Business or Profession. (From Schedule A)		
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		203 50
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Name, address, and kind of business)		345
6. Income from Fiduciaries. (Name and address)		
7. Rents and Royalties. (From Schedule B)		
8. (a) Profit from Sale of Stocks and Bonds held two years or less. (From Schedule C (a))		
(b) Profit or Loss from Sale of Other Assets held two years or less. (From Schedule C (b))		
(c) Profit or Loss from Sale of Capital Assets (if not reported as Item 30). (From Schedule C (c))		
9. Taxable Interest on Liberty Bonds, etc. (From Schedule D)		
10. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1932 Act		21 152 75
(b) Domestic Corporations not subject to taxation under Title I of 1932 Act		
(c) Foreign Corporations		
11. Other Income. (Name source) (Use separate schedule, if necessary)		
12. TOTAL INCOME (Items 1 to 11)		53 855 25

DEDUCTIONS

13. Interest Paid	2 545 67	
14. Taxes Paid. (Explain in Schedule E)	1 203 88	
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)		
16. Bad Debts. (Explain in Schedule F)	3 701 70	
17. Contributions. (Explain in Schedule G)	2 600 00	
18. Other Deductions Authorized by Law. (Explain in Schedule H)		
19. TOTAL DEDUCTIONS (Items 13 to 18)		10 051 25
20. NET INCOME (Item 12 minus Item 19)		43 804 00

COMPUTATION OF TAX (See Instruction 33)

21. Net Income Subject to Tax (Item 20 above)		43 804 00	31. Normal Tax on ____ of Item 30	160 00
22. Less: Interest on Liberty Bonds, etc. (Item 9)			32. Normal Tax on ____ of Item 30	1 260 10
23. Dividends (Item 10 (a))	21152 75		33. Surtax on Item 30 (see instruction 33)	3 662 76
24. Personal Exemption	2500		34. Tax on Net Income (total of Items 31 to 33)	5 082 86
25. Credit for Dependents	400		35. Adjustment for Capital Gain or Loss (10% of Item 30)	0
26. Total of Items 23 to 25	24052 75	24 052 75	36. Total Tax (total of or difference between Items 34 and 35)	5 082 86
27. Balance subject to Normal Tax (Item 21 minus Item 26)		19 751 25	37. Less: Income Tax Paid at Source (4% of Item 9)	
28. Amount taxable at 4% (not over $4,000)		4 000 00	38. Income Tax Paid to a foreign country or U.S. possession	0
29. Amount taxable at 8% (Item 27 minus Item 28)		15 751 25	39. Balance of Tax (Item 36 minus Item 37 and 38)	5 082 86
30. Amount of Capital Net Gain or Loss (if not reported on Item 8 (c)) (From Schedule C (c))				

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief is a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the National Industrial Recovery Act and the Regulations issued thereunder.

Alfred C. Fuller is away from Hartford on Extended Trip
(See Instruction 37) (If signature is made by agent, the authority must be attached to this form)

Sworn to and subscribed before me this 5th day of March 1934.

H. M. Watson Notary Public

Wallace E. Campbell
(Address of agent)
973 Main St. W. Hartford Ct
(Address of agent)

NOTARIAL SEAL

An amended return must be marked "Amended" at top of return. Check and money orders will be accepted only if payable at par.

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SCHEDULE A—INCOME (OR LOSS) FROM BUSINESS OR PROFESSION (See Article 7)

1. Gross receipts from business or profession (state kind of business) ..... $

Cost or Gross Sale		
2. Inventory at beginning of year		
3. Merchandise bought for sale		
4. Other costs (Itemize below or on separate sheet)		
5. Plus inventory at beginning of year		
7. Total (Lines 2 to 6)		
8. Less inventory at end of year		
9. Net Cost or Gross Sale (Line 7 minus Line 8)		

Enter "C", or "C or M", on Lines 8 and 9 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed on Lines 2 and 10.

Other Business Deductions		
10. Salaries not included on "Labor" in Line 2 (do not deduct compensation for your services)		
11. Interest on business indebtedness to others		
12. Taxes on business and business property		
13. Losses (explain in table at foot of page)		
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)		
16. Rent, repairs, and other expenses (Itemize below or on separate sheet)		
17. Total (Lines 10 to 16)		
18. Total Deductions (Line 9 plus Line 17)		
19. Net Profit (or Loss) (Line 1 minus Line 18) (Enter as Item 2)		

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Taxes (as listed under Schedule A, Part II, Deductions)	4. Depreciation (Explain in table at foot of page)	5. Repairs	6. Other Expenses (Itemize below)	7. Net Profit (Enter in Item 3)
(a)						

Explanation of deductions claimed in Columns 4.

SCHEDULE C—PROFIT OR LOSS FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Cost	6. March 1, 1913, Value if Included Prior to That Date	7. Cost or Improvements Subsequent to Acquisition or March 1, 1913	8. Depreciation Allowed (or Allowable) Since Acquisition or March 1, 1913	9. Net Profit or Loss
(a) Shares and Bonds* Held Two Years or Less:	Mo. Day Year	Mo. Day Year						
Total (a) (Transfer net profit to Item 4 (a))								
(b) Other Assets Held Two Years or Less:								
Total (b) (Transfer net profit or loss to Item 4 (b))								
(c) Capital Assets:								
Total (c) (Transfer net gain or loss to Item 4 (c) or 20)								

* As defined in Section 12 (d), 1922 Act.
State how property was acquired

SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations in Personalty	2. Amount Owned	3. Interest Received or Accrued	4. Provisions Under Which Exempt from Taxation	5. Amount Owned at Close of Taxable Year	6. Interest on Amount in Column 5 or Proportion Thereof (Enter in Item 6)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All		
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions			All		
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917			All		
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			$2,000		
(e) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All		

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

61

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SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value After March 1, 1913, Adjusted (Instruction 7)	4. Depreciation (Instruction in letter (c) of regs.)	5. Balance	6. Gross Revenue (Instruction below)	7. Net Profit (Transfer item to Item 9)
	$	$	$	$	$	$

Explanation of deductions claimed in Column 6

SCHEDULE C—PROFIT OR LOSS FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Cost	6. March 1, 1913, Value if Acquired Prior to That Date	7. Cost or Depreciation Allowed (or Adjustment on March 1, 1913)	8. Depreciation Allowed (or Adjustment Since Acquired on March 1, 1913)	9. Net Profit or Loss
(a) Stocks and Bonds* Held Two Years or Less:	Mo. Day Year	Mo. Day Year						
			$	$	$	xxxxx xx	xxxxx xx	$
						xxxxx xx	xxxxx xx	
Total (a) (Transfer net profit to Item 3 (a))	xxxxx	xxxxx	$	$	$	xxxxx xx	xxxxx xx	$
(b) Other Assets Held Two Years or Less:								
			$	$	$	$	$	$
Total (b) (Transfer net profit or loss to Item 3 (b))	xxxxx	xxxxx	$	$	$	$	$	$
(c) Capital Assets:								
			$	$	$	$	$	$
Total (c) (Transfer net gain or loss to Item 9-(c) or 10)	xxxxx	xxxxx	$	$	$	$	$	$

*As defined in Section 23 (t), 1932 Act.
State how property was acquired

SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Period (if less than entire taxable year)	5. Amount Owned at Close of Exemption	6. Interest on Amounts in Items of Exemption (Enter in Item 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	xxxxxx xx	xxxxxx xx
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions			All	xxxxxx xx	xxxxxx xx
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917			All	xxxxxx xx	xxxxxx xx
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			$2,000	$	$
(e) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	xxxxxx xx	xxxxxx xx

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Other Adjusted	4. Property Less Than Acquisition	5. Cost (Instructions of Letter)	6. March 1, 1913, Value if Acquired Prior to That Date (Instructions Letter)	7. Depreciation Allowed for Adjustment of Prior Years	8. Depreciation Allowed This Year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 15

1. Kind of Property	2. Date Acquired	3. Cost or Value of (If Owned Prior to March 1, 1913, Adjusted Value)	4. Depreciation Allowed	5. Depreciation Allowed Since Acquired	6. Insurance and Other Value	7. Recognized Loss
		$	$	$	$	$

710

61 A. C. FULLER

SCHEDULE E

Item 14—Taxes:	
Town of West Hartford	$589.76
Tax on Dividends	603.80
Tax on Bank Checks	10.32
	$1,203.88

Item 16—Bad Debts:

Loss on Canton Company—a local Investment Company, Mr. Fuller being one of the endorsers on a note of the above company to the Chemical Bank and Trust Company of New York. Payments on note were made during 1933 as follows:

Jan. 24	$616.95
Mar. 24	616.95
May 23	616.95
July 24	616.95
Sept. 22	616.95
Nov. 22	616.95
Total	$3,701.70

Similar deductions were allowed by Examiner on the 1932 return of this taxpayer.

Item 17—Contributions:	
Hartford Community Chest	$1,700.00
Second Church of Christ, Scientist	450.00
Connecticut Children's Aid Soc	100.00
Connecticut Council of Religious Education	100.00
Children's Museum of Hartford	25.00
Gaylord Farm Association	25.00
Connecticut Council of Churches	50.00
A. M. E. Zion Church	50.00
Y. M. C. A	25.00
Salvation Army	25.00
Wadsworth Atheneum	10.00
The Gideons	10.00
Hebrew Ladies' Old Home Assn	15.00
C. R. Root, Treasurer—Red Cross	10.00
West Middle School Milk Fund	3.00
Hartford Tuberculosis Society	2.00
	$2,600.00

F. 11.

63 **BEFORE UNITED STATES BOARD OF TAX APPEALS**

Docket Nos. 81049, 83919

ALFRED C. FULLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

John C. Parsons, Esq., for the Petitioner.
P. A. Bayer, Esq., for the Respondent.

Memorandum opinion

VAN FOSSAN: These proceedings were brought to redetermine deficiencies in income tax of the petitioner for the years 1931, 1932, and 1933 in the amounts of $10,311.09, $4,732.93, and $5,320.30, respectively.

Petitioner assails the inclusion in his gross income by the respondent of income from a voluntary irrevocable trust, established in connection with a divorce procured by his wife.

The stipulation of facts by the parties, together with the exhibits therein referred to, are incorporated in the record.

The facts in substance are that the petitioner, an individual, and a resident of Hartford, Connecticut; was married to Evelyn W. Fuller on April 8, 1908.

Two children were born of this union, namely, Alfred H. Fuller, on March 27, 1913, and Avard E. Fuller, on March 17, 1915.

On July 25, 1930, petitioner and his wife entered into a written agreement reciting that Mrs. Fuller had grounds for a
64 divorce and intended to institute legal proceedings to obtain a divorce; that petitioner intended making no opposition; that they intended by the agreement to determine their respective rights and duties in respect to the support and maintenance of Mrs. Fuller and their children, the custody of the latter, and the rights of each in the property of the other, if any, in lieu of a judicial determination thereof in the contemplated divorce action; that petitioner intended to create a trust for the benefit of his wife, for her support and maintenance on a monetary and social scale equal to her present mode of living, and make other provisions for the benefit of his wife and their children. It was agreed that Mrs. Fuller would institute legal proceedings to secure a divorce and that petitioner would pay all of the expenses arising from such action.

It was further agreed that petitioner would deliver forthwith to a named escrow agent a certificate for 60,380 shares of the common

capital stock of the Fuller Brush Company with power of attorney for transfer. Upon the issuance of the decree of divorce the escrow agent was authorized to cause the stock to be transferred on the books of the company to three trustees, consisting of petitioner, Mrs. Fuller, and The Hartford-Connecticut Trust Company, to be held by them in trust. Certain reservations were made concerning voting rights of the stock.

In addition, it was provided that the three trustees were to hold the certificate of stock for an absolute period of 10 years in any event for the following purposes: maintenance and support of Mrs. Fuller, or in the case of her prior decease then the maintenance and support of their two sons, or the survivor. Should both sons be deceased prior to the expiration of the period, the trust was to be devoted to the maintenance and support of the heirs of Mrs. Fuller or as she should provide in her will, with power in the trustees to withhold and accumulate, and invest and
65 reinvest the principal, and to sell the stock and invest the proceeds for the purposes of the trust. The power to sell, however, was to be exercised only when the three trustees agreed thereto in writing. The income from the stock or principal was to be held in trust for the purposes above-named. At the expiration of the 10-year period the principal and accumulated dividends, interest rights, and income, if any, not previously disbursed were to become the absolute property of Mrs. Fuller, with right of disposition by will or otherwise, free of all restrictions under the trust and free alike of all right, title, and interest of petitioner.

The agreement also contained provisions with respect to household furniture and automobiles, and the homestead property.

Petitioner further agreed to make weekly payments of $40 a week to Mrs. Fuller for a period of five years from the date of the divorce decree with contingent provisions for its continuation after the expiration of five years.

Provisions were made as to the custody and control of the children and petitioner agreed to establish an irrevocable trust for the equal benefit of the two children, pursuant to the details of the agreement.

Both parties agreed that in consideration of the covenants of the agreement they would "forever waive and surrender all their respective rights, title, and interest in and to the property and estate of the other, now held or hereafter acquired, including the right of support, dower, curtesy, and other legal rights, if any, which now have or hereafter might claim in the property of the other, and also all claims which either has or may have against the other on account of the present marital relation, * * *."

On November 12, 1930, the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, made its findings and decree in the divorce action brought by
66 Mrs. Fuller against petitioner. In the findings it was recited: "that the plaintiff and the defendant have heretofore on or about the 25th day of July 1930, entered into a written agreement for the custody and support of said minor children, for the support of the plaintiff and in settlement of the property rights of the plaintiff and the said defendant." Whereupon the court decreed "that the plaintiff be, and she hereby is, granted a divorce from the bonds of matrimony existing between the plaintiff and the defendant and that the said parties be and they hereby are restored to the status of single persons." The court also decreed "that said agreement entered into between the plaintiff and the defendant on or about the twenty-fifth day of July 1930, be and the same hereby is approved."

Thereafter, on December 22, 1930, petitioner, his wife, and The Hartford-Connecticut Trust Company entered into a trust agreement to carry out the purposes of the July 25, 1930, agreement between petitioner and Mrs. Fuller. Provisions were made in this trust agreement to meet all the requirements of the earlier agreement between petitioner and his wife.

Petitioner, in carrying out the agreement, caused to be transferred on the books of the Fuller Brush Company 60,380 shares of the Class A stock from himself individually to himself as trustee and delivered the certificate for the shares to the corporate trustee named in the agreement. Petitioner also executed a dividend order against the shares, directing the Fuller Brush Company to pay all dividends thereon to the corporate trustee. The corporate trustee has received from the company all the dividends and income from the stock during the years 1931, 1932, and 1933, in the amounts of $60,380, $36,228, and $20,529.20, respectively. These dividends so received by the corporate trustee have been paid to or disbursed for the benefit of Mrs. Fuller.

67 At the time the agreements were executed Mrs. Fuller had no substantial amount of separate funds of her own available to her as a means of support.

The corporate trustee did not pay any part of the dividends received by it on the Fuller Brush Company stock, or any of the income from the trust, to petitioner.

Petitioner did not report in his income tax returns for the years 1931, 1932, or 1933, any of the dividends on the 60,380 shares of Fuller Brush Company stock held under the trust agreement.

Petitioner is the founder of the Fuller Brush Company and

during all the years involved was the president of that corporation. The corporation, during this period, had outstanding only one class of voting stock, to-wit, its Class A common stock, the amount of such stock outstanding varying between 172,000 and 186,000 shares. Petitioner, during the years in question, owned 60,380 shares of the stock, which, together with the 60,380 shares held under the trust agreement, constituted more than a majority of the stock.

Docket No. 81049 covers the matter of petitioner's tax for the years 1931 and 1932. The year 1931 involves an overpayment. Petitioner's income tax for the taxable year 1931 was paid in four installments as follows:

	Credit	Balance
3/15/32	$1,771.56	------
6/13/32	1,000.00	------
9/14/32	1,000.00	------
12/15/32	1,000.00	------

A claim for refund was filed March 9, 1934, and the petition to this Board was filed August 9, 1935.

The question presented is whether the income from the trust fund for Mrs. Fuller should be treated for tax purposes as the income of petitioner. It should here be noted that the matter of the trust for the support of the children is not here in issue.

Respondent's contention is that the income is taxable to petitioner. This contention is based upon the Supreme Court's determination in the case of Douglas v. Willcuts, 296 U. S. 1, and the cases following the rule there laid down.

Petitioner seeks to distinguish the present cases from the rule of Douglas v. Willcuts, supra.

The opinion of this Board in the case of Robert Glendenning et al., Executors, 36 B. T. A. 486 (on appeal C. C. A., 3), well states the rule laid down in Douglas v. Willcuts, supra, and makes a searching analysis of the subsequent related cases to date. We quote from that case:

"It is now well settled, following the decision in Douglas v. Willcuts, 296 U. S. 1, that the income of a trust paid directly to a divorced wife is taxable to the husband who created the trust, whenever the purpose of the trust and the provision for payment of its income is to satisfy a legal obligation of the husband to support and maintain his wife, whether the satisfaction of that obligation results from the payment of alimony decreed by a competent court, or from the carrying out of a separation agreement which provides for such payments in lieu of alimony, dower, or other rights of the wife in the property of the husband. Albert C. Whitaker, 33 B. T. A. 865; Helvering v. Brooks, 82

Fed. (2d) 173. See also Helvering v. Coxey, 297 U. S. 694, reversing 79 Fed. (2d) 661; Helvering v. Stokes, 296 U. S. 551, reversing 79 Fed. (2d) 256.

"In several recent cases, however, this proposition has been limited, where it appeared that the legal obligation of the
69 husband to support and maintain his wife had been terminated, under the law of a particular state, by divorce or by subsequent remarriage of the wife; Harry S. Blumenthal, 34 B. T. A. 994; affd., Fed. (2d) (June 28, 1937); Henry Oliver Rea, 35 B. T. A. 1132; Edward T. Hall, 36 B. T. A. 398. And in these cases it was held that the income of the trust distributed to the wife after divorce or remarriage is not taxable to the husband."

The last cited group of cases are, as above stated, limitations on the rule and were held not pertinent in the Glendenning case, supra. See discussion of distinguishing grounds, pages 490, 491, of the opinion. The conclusion in the Glendenning case, supra, was that "there was a legal obligation existing at the time of creation of the trust and there was another legal obligation" in the taxable year, arising out of the trust agreement. See also John Ernest Goldring, 36 B. T. A. 779.

Likewise, in the present case, at the time of the execution of the agreement there existed a legal obligation on petitioner to support his wife, and in the taxable years there was a legal obligation arising out of the agreement.

The agreement in the instant case was made in contemplation of divorce and affirmatively expressed the intention to determine the respective rights and duties with reference to the support and maintenance of Mrs. Fuller, "in lieu of a judicial determination thereof."

Petitioner strongly urges the view expressed in Commissioner v. Tuttle, 89 Fed. (2d) 113. There the Sixth Circuit Court of Appeals drew several distinctions between that case and the Douglas v. Willcuts case, supra, and apparently turned its decision on the question as to whether local law permits the obligation of the husband to the wife to be discharged by the agreement between the parties, or whether the court, in making the divorce decree, is permitted to disregard the prior prop-
70 erty settlement and enter a new settlement in the divorce decree. This Board has heretofore, in John Ernest Goldring, supra, rejected this contrary view and suggested the thought that the Tuttle case was out of line with Helvering v. Brooks, 82 Fed. (2d) 173 and Helvering v. Coxey, 297 U. S. 694.

Petitioner makes much of the facts that, in the creation of the trust, he has forever placed beyond his power the corpus thereof, and that he in no manner stands responsible for any deficiency or

variation in the income of the trust, nor is he entitled to any excess above a stipulated amount. Although this would appear to be true, save for certain reservations for a 10-year period and limitations upon the right to sell the stock, the conclusion which petitioner asks would not follow. The Supreme Court in Douglas v. Willcuts, has classified the trust there involved as "a channel for the application of the income" to the grantor's obligations and this Board on a recent occasion in Stephen J. Leonard, 36 B. T. A. 563, where this same issue was urged has said:

"Petitioner argues that he completely divested himself of all interest in the trust corpus and income and as no part would ever revert to him, the income is not taxable to him as income used to discharge his legal obligation. Petitioner did not part with all present interest. Under the facts and circumstances here the income distributed was charged with serving a beneficial use of the grantor, i. e., a partial discharge of his legal obligation for the support and maintenance of his wife arising by reason of the marriage relation and the support and maintenance of his minor children by reason of his parental obligation. * * *"

Petitioner also urges the constitutional question under the due process of law clause of the Fifth Amendment
71 as to whether petitioner's income can legally be measured in part by that earned by the irrevocable trust fund. We believe this argument falls with the statement of the Supreme Court in Douglas v. Willcuts, supra.

"No question is raised as to the constitutional power of the Congress to attribute to petitioner the income thus segregated and paid in discharge of his obligation, and that authority could not be challenged successfully." Burnet v. Wells, 289 U. S. 670, 677, 682, 684.

Petitioner stresses the fact that the divorce decree contains no provision for alimony for the support and maintenance of Mrs. Fuller. It is to be noted the Court recites in its findings as above set out that an agreement with reference to support of the plaintiff had theretofore been entered into and thereupon approved the agreement. Whether this was tantamount to an adoption of the agreement as that of the Court it is unnecessary to discuss. Moreover, the absence is immaterial. Commissioner v. Hyde, 82 Fed. (2d) 174 (C. C. A. 2); Helvering v. Brooks, supra; Albert C. Whitaker, 33 B. T. A. 865.

Petitioner also urges that pursuant to the provisions of the agreement of July 25, 1930, he is obligated to pay 15 per cent. of his net income into a trust fund for the benefit of his two children, such net income to be the amount reported for Federal

tax purposes, and that it would be unjust if petitioner had to pay into the trust for his sons an additional 15 per cent. on the income earned by the trust. Without deciding the equity of this question, it may be observed that this is a matter between the parties themselves and not of any concern in the present case.

Decision will be entered under Rule 50.

Enter:

Enter, March 11, 1938.

72 Before United States Board of Tax Appeals, Washington

Docket No. 81049

ALFRED C. FULLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the Memorandum Opinion of the Board entered March 11, 1938, the respondent herein having on March 29, 1938, filed a proposed recomputation and the petitioner having on April 15, 1938, filed an acquiescence therein, now therefore, it is

Ordered and decided: That there are deficiencies in income tax for the years 1931 and 1932 in the respective amounts of $10.311.09 and $4,732.93.

Enter:

Entered April 19, 1938.

(S) ERNEST H. VAN FOSSAN, *Member.*

73 Before United States Board of Tax Appeals, Washington

Docket No. 83919

ALFRED C. FULLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the Memorandum Opinion of the Board entered March 11, 1938, the respondent herein having on March 29, 1938, filed a proposed recomputation and the petitioner having on April 15, 1938, filed an acquiescence therein, now therefore, it is

Ordered and decided: That there is a deficiency in income tax for the year 1933 in the amount of $5,320.30.

Enter:

Entered April 19, 1938.

(S) C. R. ARUNDELL, *Member.*

74 Before United States Board of Tax Appeals

Docket Nos. 81049, 83919

[Title omitted.]

Petition for review

Filed July 8, 1938

Alfred C. Fuller, the petitioner in this cause, by John C. Parsons, Esq., counsel, hereby files his petition for a review by the Circuit Court of Appeals for the Second Circuit of the decisions by the United States Board of Tax Appeals rendered on April 19, 1938, 37 B. T. A. No. —, determining deficiencies in the petitioner's Federal income taxes for the calendar years 1931, 1932, and 1933, in the respective amounts of $10,311.09, $4,732.93, and $5,320.30.

I

The petitioner, Alfred C. Fuller, is a citizen of the United States and resides in the City of Hartford, State of Connecticut.

II

NATURE OF CONTROVERSY

75 The controversy involves the proper determination of the petitioner's liability for Federal income taxes for the calendar years 1931, 1932, and 1933. The sole question involved in this appeal is whether the income from a voluntary irrevocable trust created by the petitioner by indenture dated December 22, 1930, should be treated for tax purposes as his income.

On July 25, 1930, the petitioner and Evelyn W. Fuller, his then wife, executed a written agreement in contemplation of proceedings for divorce to be brought by Mrs. Fuller, for the purpose of settling their respective rights and duties as to the support and maintenance of Mrs. Fuller and their children, and the rights of each of the parents in and to the property of the other in lieu of a judicial determination thereof in said contemplated divorce action.

On November 12, 1930, in a Nevada Court, Mrs. Fuller obtained a final and absolute decree of divorce against the petitioner. The decree approved the agreement of July 25, 1930.

On December 22, 1930, the petitioner, his divorced wife, and The Hartford-Connecticut Trust Company entered into an indenture of trust conforming to the terms of the agreement of July 25, 1930. The income from the trust fund which consisted of 60,380 shares of common capital stock, Class A, of The Fuller Brush Company, was thereafter paid to the corporate Trustee for the maintenance and support of Mrs. Fuller. The indenture expressly provided that the trust was to continue for a period of ten years from November 12, 1930, at the expiration of which the trust will terminate and the principal and accumulated interest become the absolute property of Mrs. Fuller free of trust, or in case of her prior death, be distributed as provided in her will, or if she left no will, to her heirs.

All the income from this trust fund has been received during the years 1931, 1932, and 1933 and thereafter by The
76 Hartford-Connecticut Trust Company, as Trustee, and has been paid out to or disbursed for the benefit of Mrs. Fuller. No part of it has at any time been paid to the petitioner.

The petitioner did not treat this income, which Mrs. Fuller received from the trust, as income of his own, nor did he include it in his return for income tax purposes. The Commissioner of Internal Revenue determined that for the years in question, namely, 1931, 1932, and 1933, the income from the trust fund was taxable to the petitioner.

III

The said Alfred C. Fuller, being aggrieved by the conclusions of law stated in the opinion of the Board and by its decision rendered pursuant thereto, desires to obtain a review thereof by the Circuit Court of Appeals for the Second Circuit.

IV

Assignments of error

The petitioner believes and avers that errors were committed by the Board, to his damage and prejudice, as follows:

(1) In including in the petitioner's gross income for the calendar years 1931, 1932, and 1933 the amount of the income earned during said years by the irrevocable trust created by the agreement entered into on December 22, 1930, between the petitioner, his divorced wife Evelyn W. Fuller, and The Hartford-Connecticut Trust Company, which agreement was entered into pursuant to the agreement between the petitioner and his then wife, said Evelyn W. Fuller, dated July 25, 1930.

(2) In holding that the income earned by said irrevo-
77 cable trust constituted taxable income of the petitioner for

said calendar years 1931, 1932 and 1933 although the petitioner had no control over the disposition of said income and although said income never belonged to the petitioner and was never paid to or received by him, but was paid to The Hartford-Connecticut Trust Company as Trustee for the benefit of the petitioner's divorced wife Evelyn W. Fuller in accordance with the terms of said above-mentioned agreements.

(3) In holding that in the tax years involved there existed upon the part of the petitioner a legal obligation arising out of said agreement of July 25, 1930 or out of said agreement of December 22, 1930, and that the income from said voluntary irrevocable trust was used to discharge or defray any legal obligation on the part of the petitioner.

(4) In holding that the income earned by said irrevocable trust constituted taxable income of the petitioner for said calendar years 1931, 1932, and 1933 although the effect of such holding is to measure the petitioner's tax not by his own income but in part by that of another, contrary to due process of law as guaranteed by the Fifth Amendment to the United States Constitution, and is equivalent to an exaction of tribute from the petitioner measured by income or return on property which does not belong to him.

(5) In finding deficiencies in the petitioner's Federal income taxes for the calendar years 1931, 1932 and 1933, in the respective amounts of $10,311.09, $4,732.93, and $6,320.30.

JOHN C. PARSONS,
Counsel for Petitioner,
750 Main Street, Hartford, Connecticut.

78 [*Duly sworn to by John C. Parsons; jurat omitted in printing.*]

Before United States Board of Tax Appeals

Docket Nos. 81049 and 83919

[Title omitted.]

Notice of filing petition for review

Filed Aug. 6, 1938

To J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Washington, D. C.

79 Please take notice that the petitioner on the 8th day of July, 1938, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the Circuit Court of Appeals for the Second Circuit of the

decisions of the Board heretofore rendered in the above entitled causes. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated at Hartford, Connecticut, this 14th day of July 1938.

Respectfully,

JOHN C. PARSONS,
Counsel for Petitioner, 750 Main Street,
Hartford, Connecticut.

Personal service of the return notice, together with a copy of a petition for review and assignments of error mentioned therein, is hereby acknowledged this 16th day of July 1938.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

80 Before United States Board of Tax Appeals

[Title omitted.]

Praecipe for Record

Filed Aug. 6, 1938

TO THE CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You are hereby requested to prepare and within sixty days from the date of the filing of the Petition for Review in the above cases transmit to the Clerk of the United States Circuit Court of Appeals for the Second Circuit certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the above entitled cases.

2. Petition to the United States Board of Tax Appeals filed August 9, 1935 (Docket No. 81049), omitting Exhibits B, C, and D attached thereto.

3. Answer to said Petition filed September 30, 1935 (Docket 81049).

4. Amendment to said Petition filed May 5, 1936 (Docket No. 81049).

81 5. Answer to Amendment to Petition filed May 13, 1936 (Docket No. 81049).

6. Petition to the United States Board of Tax Appeals filed April 29, 1936 (Docket No. 83919), omitting Exhibits B, C, and D attached thereto.

7. Answer to said Petition filed May 26, 1936 (Docket No. 83919).

8. Stipulation of Facts including Exhibits A, B, and C attached thereto.

9. Respondent's Exhibit A, being the Taxpayer's income tax return for the calendar year 1931.

10. Respondent's Exhibit B, being the Taxpayer's income tax return for the calendar year 1932.

11. Respondent's Exhibit C, being the Taxpayer's income tax return for the calendar year 1933.

12. Memorandum Opinion of United States Board of Tax Appeals dated March 11, 1938.

13. Decisions of United States Board of Tax Appeals dated April 19, 1938.

14. Petition for Review filed July 8, 1938.

15. Proof of Service of a copy of Petition for Review on respondent.

16. This Praecipe.

17. Proof of Service of a copy of this Praecipe on Respondent.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Second Circuit.

Dated this 5th day of August, A. D. 1938.

JOHN C. PARSONS,
Attorney for Alfred C. Fuller,
Petitioner.

82 Before United States Board of Tax Appeals

[Title omitted.]

Notice of filing praecipe

Filed August 18, 1938

To J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue, Washington, D. C.;

Please take notice that on the 6th day of August 1938, I filed with the Clerk of the Board a Praecipe designating the portions of the record to be transmitted to the Circuit Court of Appeals for the Second Circuit in the above entitled cases, a copy of which Praecipe is hereto annexed and herewith served upon you.

Dated at Hartford, Connecticut, this 9th day of August 1938.

Respectfully,

JOHN S. PARSONS,
Counsel for Petitioner.
750 Main Street, Hartford, Conn.

Personal service of the foregoing notice and a copy of the Praecipe is hereby accepted and acknowledged this 10th day of August 1938.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

83 [Clerk's certificate to foregoing transcript omitted in printing.]

84 In United States Circuit Court of Appeals for the Second Circuit

No. 129—October Term, 1938

Argued Feb. 9, 1939. Decided June 30, 1939

ALFRED C. FULLER, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the Board of Tax Appeals

Before L. HAND, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

On petition to review an order of the Board of Tax Appeals assessing a taxpayer upon his income for the years 1931, 1932, and 1933.

John C. Parsons, of Hartford, Conn., for petitioner.

L. W. Post, Sp. Asst. to Atty. Gen., for Helvering, Commissioner.

William D. Mitchell, of New York City, amicus curiae.

Opinion

Per Curiam.

This case differs from Helvering v. Leonard, 2 Cir., — F. 2d —, handed down herewith, only in that the divorce was granted in Nevada, and the trust was in full discharge of the husband's duty to support the wife. Under the law of Nevada a settlement of the kind here in question does not conclude the divorce court as to the wife's allowance, but the allowance once made is final (Sweeney v. Sweeney, 42 Nev. 431, 179 P. 638) unless the decree reserves power to the divorce court to modify it. Lewis v. Lewis, 53 Nev. 398, 2 P. 2d 131; Aseltine v. Second Judicial District Court, 57 Nev. 269, 62 P. 2d 701. The decree of divorce contained no such reservation in the case at bar, and the settlement was a

final discharge. The income from the trust was therefore taxable only to the wife.

Order reversed; deficiencies expunged.

85 In United States Circuit Court of Appeals, Second Circuit

ALFRED C. FULLER, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the United States Board of Tax Appeals

Judgment

Filed July 19, 1939

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is reversed with directions to expunge the deficiencies.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

D. E. ROBERTS, *Clerk.*

86 [File endorsement omitted.]

87 [Clerk's certificate to foregoing transcript omitted in printing.]

88 Supreme Court of the United States

Order allowing certiorari

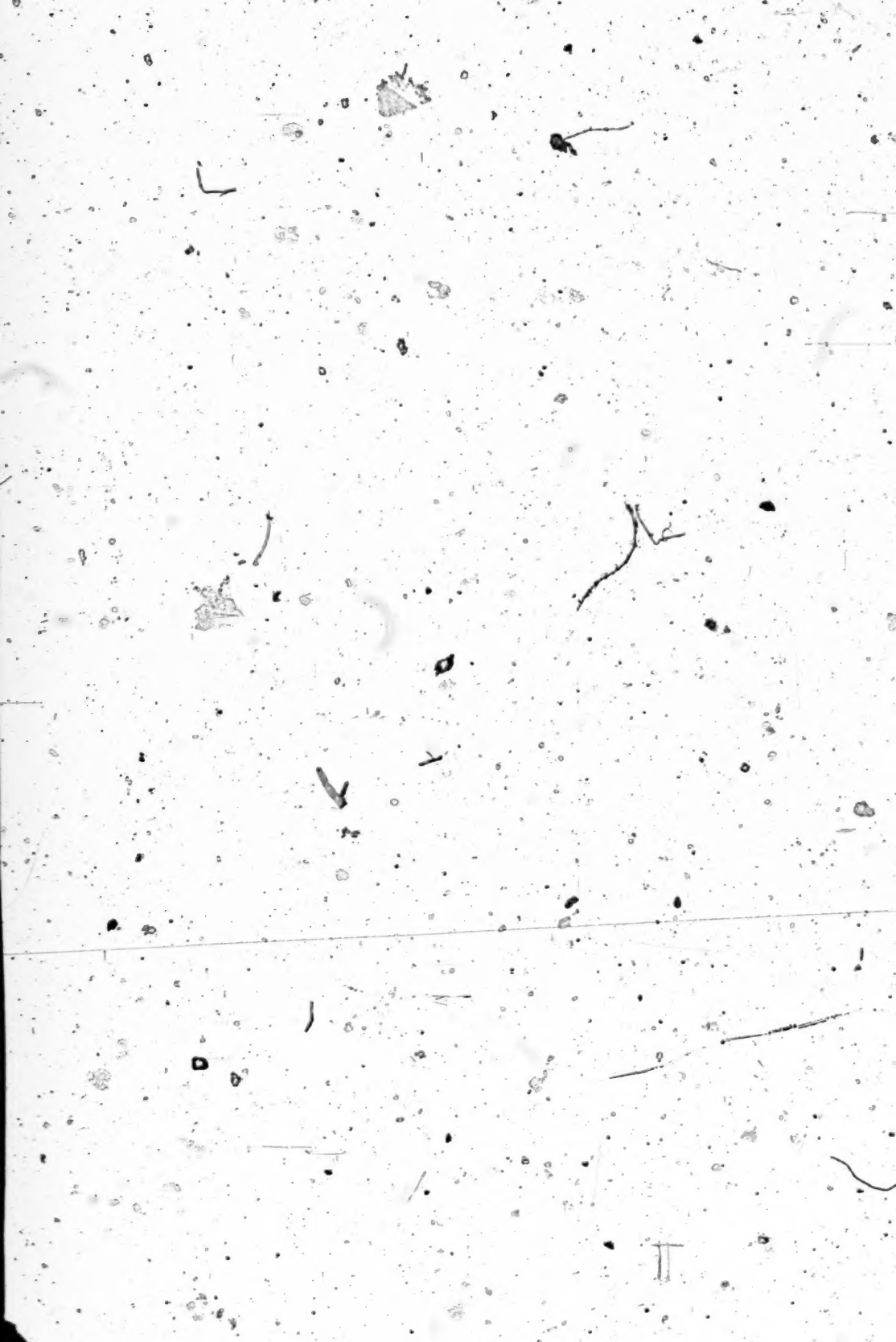
Filed February 5, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 43834. U. S. Circuit Court of Appeals, Second Circuit. Term No. 427. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner *vs.* Alfred C. Fuller. Petition for a writ of certiorari and exhibit thereto. Filed September 29, 1939. Term No. 427 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1940



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CLERK

No. 427

In the Supreme Court of the United States

OCTOBER TERM, 1939

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ALFRED C. FULLER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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CITATIONS

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Miscellaneous:	
Treasury Regulations 74, promulgated under the Revenue Act of 1928:	
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Treasury Regulations 77, promulgated under the Revenue Act of 1932:	
Art. 83	7
Art. 281	7

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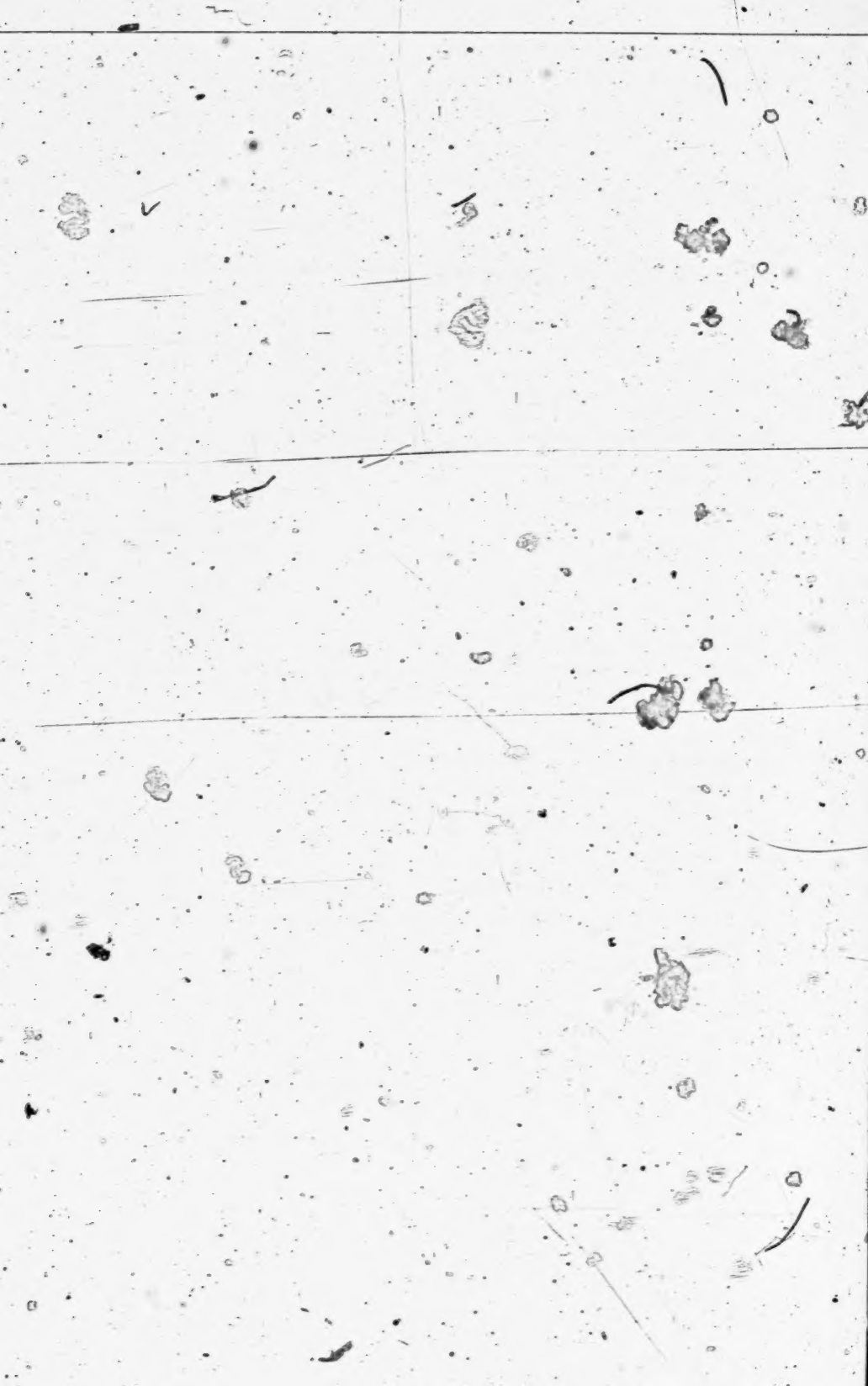

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ALFRED C. FULLER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered in the above-entitled cause on July 19, 1939, reversing the order [1] of the Board of Tax Appeals.

[1] Although the judgment of the court below refers to the "order" of the Board of Tax Apeals, the petition for review herein (R. 74–78) related to two decisions of the Board, one covering the years 1931 and 1932 (R. 72) and the other the year 1933 (R. 73).

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 63–71) is unreported. The *per curiam* opinion of the Circuit Court of Appeals (R. 84) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1939 (R. 85). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether income paid to the respondent's divorced wife under the provisions of a trust which was created by him for her maintenance and support, pursuant to an agreement between them which was approved in the divorce decree, should be included in respondent's income.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved will be found in the Appendix, *infra*, pp. 6–7.

STATEMENT

The facts as stipulated (R. 30–50) and found by the Board of Tax Appeals (R. 63–67) may be summarized as follows:

On July 25, 1930, respondent and his wife entered into an agreement in contemplation of divorce

which provided among other things for the creation by respondent of a trust of certain stock to continue for ten years. During the life of the trust, the income was to be applied to the maintenance and support of the wife, and at the termination of the trust, the trust property was to be transferred to her outright (R. 63–65). The parties agreed to waive all claims against each other arising out of the marital relation (R. 65).

On November 12, 1930, respondent's wife obtained a divorce decree in Nevada. The decree expressly approved the agreement of July 25, 1930 (R. 65–66).

On December 22, 1930, respondent created the trust provided for in the agreement, and the income from the trust estate in 1931, 1932, and 1933 was disbursed for the benefit of respondent's wife in accordance with the terms of the agreement (R. 66–67).

Respondent did not include this income in his tax returns for the years in question (R. 67), but the Commissioner assessed deficiencies with respect thereto (R. 63, 12, 27). The decisions of the Board of Tax Appeals sustaining the action of the Commissioner were reversed by the court below.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In excluding from the gross income of respondent income paid to his divorced wife from a

trust established by respondent for her maintenance and support pursuant to an agreement between them approved in the divorce decree.

2. In failing to hold respondent taxable under the doctrine of *Douglas* v. *Willcutts*, 296 U. S. 1, upon said income, as income paid out to his wife under a trust created by him to discharge his legal obligation to support her.

3. In holding that the doctrine of *Douglas* v. *Willcutts* is inapplicable unless by state law the divorce court retains power to change its original alimony award.

4. In failing to affirm the decisions of the Board of Tax Appeals and in reversing the "order" of that Board.

REASONS FOR GRANTING THE WRIT

This petition presents the same issue as *Helvering* v. *Fitch*, No. 243, present Term, in which the Government has filed a petition for certiorari to review the judgment of the Circuit Court of Appeals for the Eighth Circuit in *Fitch* v. *Commissioner*, 103 F. (2d) 702, although that case involves an alternative question as to Iowa law which is not presented here.

The issue common to this case and to the *Fitch* case is also presented in *Commissioner* v. *Leonard* decided June 30, 1939, in which a petition for certiorari is also being filed by the Government to review the judgment of the Circuit Court of Appeals for the Second Circuit.

Reference is made to the petition filed in the *Fitch* case for the reasons for granting the writ requested.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

SEPTEMBER 1939.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(*a*) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

SEC. 24. ITEMS NOT DEDUCTIBLE.

(*a*) *General rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

* * * * *

Treasury Regulations 74, promulgated under the Revenue Act of 1928:

ART. 83 *Gifts and bequests.*—Property received as a gift, or received under a will or under statutes of descent and distribution, is exempt from the income tax, although the income therefrom derived from investment, sale, or otherwise is not. An amount of

principal paid under a marriage settlement is a gift. Neither alimony nor an allowance based on a separation agreement is taxable income. (See article 281.)

ART. 281. *Personal and family expenses.*— * * * Alimony and an allowance paid under a separation agreement are not deductible from gross income. (See article 83.) * * *

The above quoted provisions of the law and regulations are the same as the corresponding provisions of the Revenue Act of 1932 and the regulations appertaining thereto (Sections 22 and 24; Regulations 77, Articles 83 and 281).

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No. 427

In the Supreme Court of the United States

OCTOBER TERM, 1939

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ALFRED C. FULLER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 45–51) is unreported. The *per curiam* opinion of the Circuit Court of Appeals (R. 57) is reported in 105 F. (2d) 903.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 19, 1939. (R. 58.) The petition for a writ of certiorari was filed September 29, 1939, and was granted February 5, 1940. (R. 58.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether income paid to the taxpayer's divorced wife under the provisions of a trust which was created by him for her maintenance and support, pursuant to an agreement between them which was approved in the divorce decree, should be included in taxpayer's income.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved will be found in the Appendix, *infra*, pp. 7–8.

STATEMENT

The facts as stipulated (R. 18–31) and found by the Board of Tax Appeals (R. 45–48) may be summarized as follows:

On July 25, 1930, taxpayer and his wife entered into an agreement in contemplation of divorce which provided among other things for the creation by taxpayer of a trust of certain stock to continue for ten years. During the life of the trust, the income was to be applied to the maintenance and support of the wife, and at the termination of the trust, the trust property was to be transferred to her outright. (R. 45–46.) The parties agreed to waive all claims against each other arising out of the marital relation. (R. 46.)

On November 12, 1930, taxpayer's wife obtained a divorce decree in Nevada. The decree expressly

approved the agreement of July 25, 1930. (R. 47.)

On December 22, 1930, taxpayer created the trust provided for in the agreement, and the income from the trust estate in 1931, 1932, and 1933 was disbursed for the benefit of taxpayer's wife in accordance with the terms of the agreement (R. 47).

Taxpayer did not include this income in his tax returns for the years in question (R. 47), but the Commissioner assessed deficiencies with respect thereto (R. 45, 7, 16). The decisions of the Board of Tax Appeals sustaining the action of the Commissioner were reversed by the court below.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In excluding from the gross income of taxpayer income paid to his divorced wife from a trust established by taxpayer for her maintenance and support pursuant to an agreement between them approved in the divorce decree.

2. In failing to hold taxpayer taxable under the doctrine of *Douglas* v. *Willcuts*, 296 U. S. 1, upon that income, as income paid out to his wife under a trust created by him to discharge his legal obligation to support her.

3. In holding that the doctrine of *Douglas* v. *Willcuts* is inapplicable unless by state law the divorce court retains power to change its original alimony award.

4. In failing to affirm the decisions of the Board of Tax Appeals and in reversing the "order"[1] of that Board.

ARGUMENT

THE TRUST INCOME IS TAXABLE TO THE HUSBAND UNDER THE DOCTRINE OF *DOUGLAS V. WILLCUTS*

This case presents the question whether it is essential, in order for the income from an "alimony trust" to be taxable to the husband under *Douglas* v. *Willcuts*, 296 U. S. 1, that the divorce court retain the power to modify the provision for the support of the wife after the entry of its final decree. Our position here is the same as our first point in *Helvering* v. *Leonard*, No. 426, present Term, where we contend that if there is a legal obligation under the applicable state law to support the wife after she has obtained a divorce, and the income from a trust is devoted to the discharge of that obligation, then the amount of trust income payable to the wife is taxable to the husband whether or not the divorce court has jurisdiction to change the provisions of its decree relating to the maintenance of the wife, or whether or not the wife has any recourse against the husband beyond the terms of the trust. Reference is made to our brief

[1] Although the judgment of the court below refers to the "order" of the Board of Tax Appeals, the petition for review herein (R. 52–54) related to two decisions of the Board, one covering the years 1931 and 1932 (R. 51) and the other the year 1933 (R. 51–52).

in the *Leonard* case (pp. 7–20), for the argument in support of that position.

However, since the *Leonard* case involves the law of the State of New York, whereas in the instant case the divorce was obtained in Nevada, it is pertinent to point out, in order to render applicable here the argument in our brief in the *Leonard* case, that in Nevada, as in New York, the husband's obligation to support the wife continues after she has obtained an absolute divorce. *Lake* v. *Bender,* 18 Nev. 361, 402–403; *Greinstein* v. *Greinstein,* 44 Nev. 174, 177–178; Sections 9463, 9465 of Nevada Compiled Laws, 1929, Vol. 4. And the divorce court will accept the agreement of the parties only if it considers its provisions entirely satisfactory. *Lewis* v. *Lewis,* 53 Nev. 398.

Although the wife obtained her divorce in Nevada, it is stipulated that the taxpayer, at all times material to this proceeding, resided in Connecticut (R. 18), and the agreement between the parties was executed in that state (R. 24). But even if the law of Connecticut applies, the husband is likewise under a legal obligation to support his wife. *Cary* v. *Cary,* 112 Conn. 256, 259; *Wright* v. *Wright,* 93 Conn. 296, 300. Thus, whether the husband's duty to his wife is properly to be determined with reference to the law of Connecticut or of Nevada, the trust income in question was used to discharge the legal obligation of support, and is

therefore taxable to the husband under *Douglas* v. *Willcuts*.[2]

CONCLUSION

The decision of the court below should be reversed.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
ARNOLD RAUM,
HOWARD D. PACK,
Special Assistants to the Attorney General.

MARCH 1940.

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[2] It may even be that, notwithstanding the absence of any residual power in the Nevada court to grant additional alimony beyond the terms of the trust once it has been approved, some other court, such as a Connecticut court, may have power so to do. Cf. *Mallina* v. *Mallina*, 167 Misc. 343, 4 N. Y. Supp. (2d) 27; 40 Col. L. Rev. 131.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

* * * * *

Treasury Regulations 74, promulgated under the Revenue Act of 1928:

ART. 83. *Gifts and bequests.*—Property received as a gift, or received under a will or under statutes of descent and distribution, is exempt from the income tax, although the income therefrom derived from investment, sale, or otherwise is not. An amount of principal paid under a marriage settlement is a gift. Neither alimony nor an allowance based on a separation agree-

ment is taxable income. (See article 281.)

ART. 281. *Personal and family expenses.*— * * * Alimony and an allowance paid under a separation agreement are not deductible from gross income. (See article 83.) * * *

The above-quoted provisions of the law and regulations are the same as the corresponding provisions of the Revenue Act of 1932, c. 209, 47 Stat. 169, and the regulations appertaining thereto (Sections 22 and 24; Regulations 77, Articles 83 and 281).

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GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

ALFRED C. FULLER

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

LUCIUS F. ROBINSON,
Counsel for Respondent.

Of Counsel:
ROBINSON, ROBINSON & COLE
FRANCIS W. COLE
JOHN C. PARSONS
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BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 63-71) is unreported. The per curiam opinion of the Circuit Court of Appeals (R. 84) is reported in 105 Fed. 2d 903.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1939 (R. 85). The petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question which the petitioner seeks to present if the petition is granted is whether the income from a voluntary irrevocable trust created by the respondent Fuller, pursuant to agreement looking to a divorce by his wife, which she later obtained, is taxable to him although he received none of the income from the trust and had no participation whatsoever, either present or prospective, in either the income or principal thereof, and although the income from the trust was not used to satisfy any legal obligation, contractual or otherwise, of his to support, maintain or pay money to his divorced wife in any of the taxable years in question.

STATEMENT

The facts as stipulated (R. 30-50) and found by the Board of Tax Appeals (R. 63-67) are summarized in the petition for *certiorari*.

OUTLINE OF ARGUMENT

I. The Circuit Court of Appeals for the Second Circuit has determined that the establishment by the respondent of the trust fund was the

equivalent of a lump sum settlement and review of this determination is not sought in this petition.

II. The granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

III. There is no conflict in the decisions of the Circuit Courts of Appeal which necessitates the establishment by this Court of a controlling principle.

IV. The function of this Court is to establish basic principles of law; not to apply those principles to endless variations of fact situations.

V. This Court, having granted *certiorari* in *Helvering v. Fitch*, has the opportunity to clarify the basic principles if it deems necessary, and therefore should not put this respondent to the burden of litigating his controversy further.

ARGUMENT

First Point

The Circuit Court of Appeals for the Second Circuit has determined that the establishment by the respondent of the trust fund was the equivalent of a lump sum settlement and review of this determination is not sought in this petition.

The trust agreement establishing the trust, the income from which the petitioner claims is taxable to the respondent, constituted an absolute, final and complete financial settle-

ment as between the respondent and his divorced wife. Mrs. Fuller released the respondent from all rights of support and maintenance in consideration of the transfer by him to a trustee of certain securities, the income from which was to be paid to her for ten years, and thereafter, commencing November 12, 1940, (R. p. 48) she was to become the legal as well as the equitable owner of the trust corpus. The respondent performed his entire duty, fulfilled his entire obligation to his former wife when he established the trust fund. Mrs. Fuller voluntarily exchanged her rights against Fuller for rights against the trustee and the trust fund. There is no more reason for taxing this respondent on his wife's income from that trust than there would be to tax him on her income from property he had under similar circumstances transferred to her outright as a lump sum settlement in complete discharge of the obligation of support. The Circuit Court of Appeals for the Second Circuit has determined that the establishment of the trust was the equivalent of a lump sum settlement and the petitioner does not seek to review this determination. To tax the respondent on the income his former wife receives from this trust fund would violate the principle established in *Hoeper v. Tax Commission*, (1931) 284 U. S. 206, for it is a fundamental proposition that to measure the income for tax purposes of one person by that of another is a taking of property without due process of law.

Second Point

The granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

This Court on October 9th granted *certiorari* in *Helvering v. Fitch*, No. 243. A petition for *certiorari* has also been

filed in *Helvering v. Leonard*, No. 426. If trust income received by the divorced wife of the settlor is applied in discharge of a continuing obligation of the settlor to support or pay money to her, the income is taxable to him under the rule of *Douglas v. Willcutts*, 296 U. S. 1. If no obligation on the part of the taxpayer to his former wife exists during the tax year, the income should be taxable to the beneficiary of the trust who receives and enjoys the income. *Commissioner v. Tuttle*, 89 Fed. 2d 112. In the *Fitch* and *Leonard* cases the petitioner contends that the Circuit Courts erred in interpreting the local law as to the conclusiveness of the divorce decrees in those cases, and that Fitch and Leonard are under a continuing obligation because the Courts which granted the divorces retained jurisdiction to compel further contribution to the support of their former wives. Although the soundness of this proposition is disputed, the petitioner in those cases claims support for his contention in the decisions of *Douglas v. Willcutts* and *Helvering v. Coxey*, 297 U. S. 694. (See Government briefs in *Helvering v. Coxey* and *Helvering v. Brooks* 82 Fed. 2d 173.) There is no corresponding question of state law involved in the *Fuller* case. The petitioner does not seek review of the Circuit Court's determination that the Nevada Court's jurisdiction over the respondent was at an end before the beginning of the tax years in question.

The petitioner may also contend in the *Fitch* and *Leonard* cases that the taxpayers impliedly agreed to see that their former wives received specified annual sums after divorce, that the trust income in those cases was applied in discharge of such a continuing obligation and may therefore be taxed to the respondents. *Douglas v. Willcutts*. No such claim is or can be made in the *Fuller* case. The Circuit Court has determined that "the trust was in full discharge of the husband's duty to support the wife". (105 Fed. 2d 903.) The

petitioner does not seek to review this determination. It is therefore apparent that the granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

Third Point

There is no conflict in the decisions of the Circuit Courts of Appeal which necessitates the establishment by this Court of a controlling principle.

The Circuit Courts of Appeal have been guided by the rule enunciated in *Douglas v. Willcutts*, namely, that income paid in discharge of an existing obligation is constructively received by the obligor and should be taxed to him, whether or not the payment is effected through the medium of a trust. It was not because the trusts were *created* in order to satisfy the husband's obligation to support and maintain his wife that the settlors were held taxable in *Douglas v. Willcutts* and similar cases*, but because by the terms of the settlements in each of that line of cases the husband assumed a contractual obligation to pay a specified annual sum to his former wife, and because the trusts were set up merely as security for the performance of that continuing obligation. At the present time the Circuit Courts of Appeal in three different circuits have decided that where there has been a final settlement discharging the husband's obligation to his wife, he is not taxable on the income from the trust which constituted the settlement. (*Commissioner v. Tuttle*, C. C. A. 6th, *supra*; *Fitch v. Commissioner*, C. C. A. 8th,

Commissioner v. Hyde, 82 Fed. 2d 174; *Alsop v. Commissioner*, 92 Fed. 2d 148, *cer. den.* 302 U. S. 767; *Glendinning v. Commissioner*, 97 Fed. 2d 71; *Donnelley v. Commissioner*, 101 Fed. 2d 879, *cer. den.* June 5, 1939, 83 L. Ed. 1032.

103 Fed. 2d 702, *cer. gran.* Oct. 9, 1939, No. 243; *Helvering v. Leonard*, C. C. A. 2d, 105 Fed. 2d 900; and *Fuller v. Helvering*, C. C. A. 2d, 105 Fed. 2d, 903.) These Courts have agreed that these cases do not fall within the rule of *Douglas v. Willcutts*, but they have not challenged the correctness of the *Douglas* case or of the cases that have followed it. Therefore there is no conflict at the present time in the different circuits necessitating the elucidation by this Court of a controlling rule or principle. That there is no conflict in the minds of the learned judges of the Circuit Court of Appeals for the Second Circuit is apparent from the fact that that Court decided the *Fuller* case in favor of the taxpayer but did not overrule the *Hyde* case, *supra*, which is on all fours with the *Douglas* case.

Fourth Point

The function of this Court is to establish basic principles of law; not to apply those principles to endless variations of fact situations.

The petition for the writ of *certiorari* in *Helvering v. Fitch*, No. 243, at pp. 14 and 15, points out that in the New York and Chicago offices of the Bureau and in the Income Tax Unit in Washington there are altogether seventy-nine cases pending where taxpayers presumably are resisting the effort to impose income taxes upon them in connection with income which they think they did not receive. Each one of these cases probably represents somewhat different facts, different trust agreements and different divorce decrees. It is the business of this Court to establish broad principles but not to concern itself with endless variations of specific facts and trust indentures, and procedural and statutory questions in the forty-eight different states relating to the effect of

divorce decrees. It is the function of the lower courts to apply the basic rules established by this Court to the manifold particular cases with varying details.

This Court has established the rule that one person should not pay a tax on the property of another (*Hoeper v. Tax Commission, supra.*) This Court has also established the rule that where property is set up in trust so that its profits serve to discharge the thereafter continuing obligation of the settlor he may be compelled to pay an income tax on the income therefrom, (*Douglas v. Willcutts; Old Colony Trust Co. v. Commissioner*; 279 U. S. 716) but this Court has impliedly stated that unless the income from such trust is applied in discharge of a then existing obligation, unless in other words some obligation from the settlor to the beneficiary exists in the tax year in question, the ordinary rules of the taxation of trusts apply. *Blair v. Commissioner*, 300 U. S. 5 at 11. The respondent respectfully contends that therefore this Court should not see fit to review each case and apply these basic rules to the varying fact situations in the seventy-nine cases already pending and in the multitude of additional cases which will inevitably arise.

Fifth Point

This Court, having granted *certiorari* in *Helvering v. Fitch*, has the opportunity to clarify the basic principles if it deems necessary, and therefore should not put this respondent to the burden of litigating his controversy further.

It is impossible for the respondent to determine whether this Court granted *certiorari* in *Helvering v. Fitch* in order to review the question of whether or not the taxpayer con-

tinued under obligation to his former wife in the tax year there involved or in order to clarify the basic principles of taxation of trust income. If the former, the respondent has pointed out under the Second Point, *supra*, that review of this question is not sought in the case at bar and that therefore the petition should be denied. If the latter, this Court has already assured to itself the opportunity of clarifying the applicable basic principles. It is therefore unnecessary for this Court to grant *certiorari* in the case at bar, and therefore the respondent should not be put to the burden of litigating his individual controversy further. Whenever reasonably possible, an early end to litigation is a basic principle of justice.

CONCLUSION

The respondent therefore respectfully prays that the petition for a writ of *certiorari* be denied.

Respectfully submitted,

LUCIUS F. ROBINSON,
Counsel for Respondent.

Of Counsel:

ROBINSON, ROBINSON & COLE
FRANCIS W. COLE
JOHN C. PARSONS
JAMES M. CARLISLE

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OCTOBER TERM, 1939

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v.

ALFRED C. FULLER

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BRIEF FOR THE RESPONDENT

FRANCIS W. COLE,
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 45-51) is unreported. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 57-58) is reported in 105 F. (2d) 903.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 58) was entered July 19, 1939. The petition for a writ of certiorari was filed September 29, 1939 (R. 58) and granted on February 5, 1940 (R. 58). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether the income for the taxable years 1931, 1932 and 1933 from an irrevocable trust created by the respondent Fuller, pursuant to agreement looking to a divorce by his wife, which she later obtained, is taxable to him although he received none of the income from the trust and had no participation whatsoever, either present or prospective, in either the income or principal thereof, and although the income from the trust was not used to satisfy any legal obligation, contractual or otherwise, of his, to support, maintain or pay money to his divorced wife in any of the taxable years involved.

STATUTES INVOLVED

The statutes involved are set forth in the appendix, infra, pp. 17 to 20.

STATEMENT

The facts as stipulated (R. 18-31) and found by the Board of Tax Appeals (R. 45-48) may be summarized as follows:

On July 25, 1930 the respondent, Alfred C. Fuller, and his then wife, Evelyn W. Fuller, executed a written agreement (R. 20-24) which in its preambles recited that the parties intended thereby to adjust, settle and determine their respective rights and duties as to the support and maintenance of Mrs. Fuller and the rights of each in and to the property of the other, if any, in lieu of a judicial determination thereof in a contemplated divorce action (R. 20).

The agreement expressly provided that both of the parties, in consideration of the covenants therein and the performance thereof, waived and surrendered all their respective rights in and to the property of the other, including the right of support, and all claims which either had or might have against the other on account of their then marital relationship (R. 24).

In said agreement respondent agreed to transfer certain shares of stock of the Fuller Brush Company in escrow (R. 21) and upon issuance of a divorce decree to establish an irrevocable trust of said stock for a period of ten years, the income therefrom to be for the maintenance and support[1] of Mrs. Fuller, or in case of her death, for the maintenance and support of the two sons of the Fullers, or in case of the death of both of the sons and in the absence of a will of Mrs. Fuller, for the maintenance and support of her heirs (R. 22). The agreement further provided that upon the expiration of the ten year period the trust should terminate and the principal, together with all accumulated dividends, interest, rights and income

[1] The words "maintenance and support" are merely terms of art requisite to the creation of a spendthrift trust. (R. 29, 30.) Sec. 5723 Conn. Gen. Stat. Rev. 1930. See Appendix, p. 20 infra.

not previously paid out should become the absolute property of Mrs. Fuller free of the trust (R. 22).

On November 12, 1930 the Second Judicial District Court of the State of Nevada in and for the County of Washoe entered its findings and final decree of divorce in favor of Mrs. Fuller (R. 25, 26). The Nevada court included in its Findings the fact that the agreement of July 25, 1930 had been entered into and its decree was in the following form (R. 26):

> "Ordered, Adjudged, and Decreed that the plaintiff be, and she hereby is, granted a divorce from the bonds of matrimony existing between the plaintiff and the defendant and that said parties be and they hereby are restored to the status of single persons.
>
> It is further Ordered, Adjudged and Decreed that said agreement entered into between the plaintiff and the defendant on or about the twenty-fifth day of July, 1930 be and the same hereby is approved."

On December 22, 1930 the respondent, his divorced wife and The Hartford-Connecticut Trust Company entered into an agreement of trust (R. 28-31). The trust agreement expressly provided that it was entered into in order to reaffirm the terms of the agreement of July 25, 1930 and to effectuate said agreement. The trust was irrevocable and was to continue for a period of ten years from November 12, 1930 regardless of any change thereafter in the Trustees, the beneficiary or the principal of said trust (R. 28).

In accordance with the trust agreement, the Trust Company as Trustee received from The Fuller Brush

Company all the dividends and income from said shares of stock during the years 1931, 1932 and 1933 (R. 19) and all of said dividends and income so received were paid out to or disbursed for the benefit of Mrs. Fuller by the said Trust Company (R. 19).

The respondent did not include this income in his tax returns for the years in question (R. 20) but the Commissioner assessed deficiencies with respect thereto (R. 7, 16). The decisions of the Board of Tax Appeals sustaining the action of the Commissioner were reversed by the Court below (R. 57, 58).

OUTLINE OF ARGUMENT

First Point

The general rule is that ownership of income, or of the property from which it accrues, determines the taxability of such income. The respondent in the case at bar has retained none of the incidents of ownership of either the income or the principal of the trust fund, the income from which is sought to be taxed to him.

Second Point

Where, pursuant to a separation agreement for the benefit of his former wife, a divorced husband has established a trust as to which he thereafter has no beneficial or property interest, present or future, in either principal or in-

come, and where he is thereafter under no continuing obligation to support her, the income from the trust paid to or for the benefit of the former wife is not taxable to the settlor.

Third Point

After the divorce decree and the establishment of the trust fund, the respondent had no further or continuing obligation to support or pay money to his former wife, and therefore her income from the trust fund is not taxable to the respondent.

Fourth Point

The property settlement was the equivalent of a lump sum settlement; the trust corpus became the equitable property of Evelyn W. Fuller, and the respondent should not be taxed on her income therefrom.

Fifth Point

The income from the trust belongs to Evelyn W. Fuller, and to measure the respondent's income in part by that earned by the trust fund would be to deprive respondent of his property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

ARGUMENT

First Point

The general rule is that ownership of income, or of the property from which it accrues, determines the taxability of such income. The respondent in the case at bar has retained none of the incidents of ownership of either the income or the principal of the trust fund, the income from which is sought to be taxed to him.

The general rule is that ownership of income, or of the property from which it accrues, determines the taxability of such income. *Blair v. Commissioner*, (1937) 300 U. S. 5; *Hoeper v. Tax Commission*, (1931) 284 U. S. 206; *Poe v. Seaborn*, (1930) 282 U. S. 101.

The respondent in the case at bar has retained none of the incidents of ownership, present or future, in either the income or the principal of the trust fund, the income from which is sought to be taxed to him. The term of the trust is for ten years from November 12, 1930. At the end of that period, the entire fund is to become the absolute property of Evelyn W. Fuller and is to be transferred to her free of the trust, or if she be not then living, the property is to pass outright by her will or to her heirs if she dies intestate. The trust is irrevocable. The respondent can under no condition recover any part of the trust fund or any of the income. If the trust income diminishes he suffers no loss and if it increases, he participates in no part of it.

Second Point

Where, pursuant to a separation agreement for the benefit of his former wife, a divorced

husband has established a trust as to which he thereafter has no beneficial or property interest, present or future, in either principal or income, and where he is thereafter under no continuing obligation to support her, the income from the trust paid to or for the benefit of the former wife is not taxable to the settlor.

This Court held in *Douglas v. Willcuts*, (1935) 296 U. S. 1 that where trust income is applied in discharge of an existing obligation of the settlor, the income remains taxable to him because the trust in such circumstances is merely a device for securing the performance of a continuing obligation. In *Helvering v. Fitch*, (1940) —U. S. —, 84 L. Ed. 399, this Court pointed out that there were three factors which made it apparent that the trust in the Douglas case "was merely security for a continuing obligation of the taxpayer to support his divorced wife". Those factors as there listed (84 L. Ed. 400) were:

1st: Douglas' "agreement to make up any deficiencies in the $15,000 annual sum to be paid her under the trust".

2nd: "The power of the Minnesota divorce court subsequently to alter and revise its decree and the provisions made therein for the wife's benefit".

3rd: "The provision (in the trust agreement) that on the death of the divorced wife the corpus of the trust was to be transferred back to the taxpayer".

Although the first and third factors were absent in the Fitch case, this Court held that the taxpayer had failed to prove the lack of power in the (Iowa) divorce court to alter or revise its decree. But the opinion makes it clear

that where (p. 403) "local law and the alimony trust have given the husband a full discharge and leave no continuing obligation, however contingent * * * income to the wife from an alimony trust (is to) be treated under the revenue acts the same as income accruing from property after a debtor has transferred that property to his creditor in full satisfaction of his obligation".

Third Point

After the divorce decree and the establishment of the trust fund, the respondent had no further or continuing obligation to support or pay money to his former wife, and therefore her income from the trust fund is not taxable to the respondent.

None of the three factors emphasized by this Court in the Fitch case as indicia of a continuing obligation is present in the case at bar.

1st: By the terms of the trust agreement, Mrs. Fuller during the taxable years in question was entitled to and did receive the net income of the trust. There was no guarantee on the part of the respondent to make up deficiencies so as to insure her receipt of a specified annual sum.

2nd: The Nevada Court retained no power to alter or revise its decree.

> "A decree a vinculo is final, and the jurisdiction of the court over the parties is after the expiration of the term at an end; and just as there can be no

> grant of alimony after such a divorce, so there can be no change in the award of alimony, unless the right to make such change is reserved by the court in its decree, as it may be, or is given by statute, as it often is. * * *. But where there is no such statute (and we have none), and where the decree does not reserve the right to the court (as it does not here) to alter the decree for alimony, no such authority exists". *Sweeney v. Sweeney*, (1919) 42 Nev. 431, 439, 179 Pac. 638, 639.

The Circuit Court of Appeals so held (*Fuller v. Commissioner*, 105 F. (2d) 903, R. 57) and that holding is not challenged in this Court.

The petitioner cannot now attack that holding for it was not assigned as error in the petition for certiorari and the question was not presented as a reason for granting the writ.[2] *Crown Cork & Seal Company v. Gutmann Company*, (1938) 304 U. S. 159; *General Talking Pictures Corporation v. Western Electric Company*, (1938) 304 U. S. 175, 305 U. S. 124.

3rd: There is no provision for reversion of the trust corpus to the settlor on the death or remarriage of the divorced wife. On November 12, 1940 the trust is to terminate and the corpus is to become the absolute property of Mrs. Fuller or if she be not then living, the property is to pass outright by her will or to her heirs if she dies intestate.

The petitioner does not dispute the absence in the case at bar of the three factors above discussed. The petitioner contends that *if* there is a legal obligation under the appli-

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[2] See the petition for certiorari, pp. 3 and 4. Contrast the petitions in *Helvering v. Fitch*, supra and *Helvering v. Leonard*, No. 426, Present Term.

cable state law to support the wife after she has obtained a divorce, and the income from a trust is devoted to the discharge of that obligation, then the amount of trust income payable to the wife is taxable to the husband whether or not the divorce court has jurisdiction to change the provisions of its decree relating to the maintenance of the wife or whether or not the wife has any recourse against the husband beyond the terms of the trust. The nature or legal basis of such an hypothetical obligation of support is not elucidated in the petitioner's brief, but reference is made to the possibility of its existence under either Nevada or Connecticut law. The vagueness of the petitioner's contention leaves the respondent in the difficult position of discussing a negative generality rather than a specific claim of law. We submit, however, that after the fulfillment of the separation agreement by the establishment of the trust, no further obligation upon the respondent to support his former wife existed or could exist either in Nevada or Connecticut or elsewhere.

So long as the marital status continues a husband is under an obligation to support his wife, but a decree of absolute divorce terminates that obligation except in so far as the divorce court otherwise decrees.

> "Unless otherwise provided by local law, a decree of divorce by a court having jurisdiction of the cause and of the parties, dissolving the bonds of matrimony, puts an end to all obligations of either party to the other, and to any right which either has acquired by the marriage in the other's property, except so far as the court granting the divorce, in the exercise of an authority vested in it by the legislature, orders property to be transferred or alimony to be paid by one party to the other." *Barrett v. Failing* (1884) 111 U. S. 523, 524-5.

There is no case or statute[3] in Nevada providing otherwise. The controlling case is *Sweeney v. Sweeney*, supra. The divorce decree in the case at bar restored the parties to the status of single persons and made no provision for alimony. It follows that the matrimonial obligation of support ceased with the termination of the matrimonial status.[4]

The decree of the Nevada court terminating the marriage relationship and restoring the parties to the status of single persons is entitled to full faith and credit in all states including Connecticut. *Gildersleeve v. Gildersleeve* (1914) 88 Conn. 689; *Sistare v. Sistare* (1910) 218 U. S. 1; *Davis v. Davis* (1938) 305 U. S. 32; *Yarborough v. Yarborough* (1933) 290 U. S. 202. Alimony can be granted only as authorized by statute. (*Schouler, Marriage, Divorce, Separation and Domestic Relations*, 6th Ed., Vol. 2, Sec. 1797.) The only Connecticut statute relating thereto (Sec. 5182 Conn. Gen. Stat. Rev. 1930, see Appendix p. 19) merely authorizes the awarding of alimony to a woman divorced by a Connecticut court. The Connecticut cases cited by the petitioner on page 5 of his brief are not in point.[5]

By the terms of the separation agreement, Evelyn W. Fuller released all rights of support against the respondent.

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[3] The Nevada statutes cited in the petitioner's brief (p. 5) and set forth in the appendix of this brief (pp. 17-19) merely authorize the divorce court to award alimony, and the Nevada cases cited by the petitioner are merely instances in which alimony was awarded in connection with the granting of a divorce.

[4] "The dissolution of the marriage relation extinguishes the subject matter which forms the basis of an action or proceeding for separate maintenance." *Herrick v. Herrick* (1933) 55 Nev. 59, 68; 25 Pac. (2d) 378. "The jurisdiction acquired by the Nevada court made the decree effective to end the marriage for all states." *Mallina v. Mallina* (1938) 4 N. Y. Supp. (2d) 27, 33.

[5] The case of *Wright v. Wright* (1919) 93 Conn. 296 held that decreed alimony not a judgment debt for the purposes of garnishment. In *Cary v. Cary* (1930) 111 Conn. 256 the Court pursuant to statutory authority modified a Connecticut divorce decree to the extent of vacating an award of monthly alimony upon the remarriage of the divorced wife.

This agreement was shown to the divorce court and approved by it, and was therefore valid and conclusive. *Maisch v. Maisch* (1913) 87 Conn. 377. The only obligation assumed by the respondent under the terms of the agreement was the obligation to establish the trust, to transfer the designated securities to the Trustees. This he performed before the beginning of any of the tax years in question. Mrs. Fuller's only rights thereafter were the property rights she acquired in the trust fund, for she voluntarily surrendered her rights against the respondent in exchange for the establishment of the trust and the creation of rights thereunder.

It is apparent that Evelyn W. Fuller could not at any time after the divorce decree was granted and the trust established force the respondent to contribute to her support either in Nevada or in Connecticut. Local law and the establishment of the trust fund have given him a complete discharge and therefore he is not liable for taxation on her income from the trust fund. See *Commissioner v. Tuttle* (1937) 89 F. (2d) 112 (C. C. A. 6th).

Fourth Point

The property settlement was the equivalent of a lump sum settlement; the trust corpus became the equitable property of Evelyn W. Fuller, and the respondent should not be taxed on her income therefrom.

The resort to the trust device was not for the purpose of securing the performance of a continuing obligation for no such obligation existed as has been pointed out under the Third Point in this brief. The respondent made an

absolute transfer and the ownership of the corpus of the trust as well as the income therefrom was finally and irrevocably renounced by him. By virtue of the Nevada decree, Mrs. Fuller became a separate and independent economic unit (Conf. *Helvering v. Clifford*, (1940) — U. S. —, 84 L. Ed. —). No one would contend that if the securities in question had been transferred outright to Mrs. Fuller free of the trust the respondent would remain liable for taxation upon the income therefrom. In such a case the property transferred becomes the absolute property of the former wife. *Cary v. Cary*, (1930) 112 Conn. 256, 259. For tax purposes the outright transfer in trust in the case at bar is no different from a lump sum settlement.

The petitioner cites in the appendix of his brief (p. 6) Article 83, Regulations 74 of the Revenue Act of 1928, which provides that an amount of principal paid under a marriage settlement is a gift and not taxable income to the recipient but that income derived from that principal is not exempt from the income tax. Inasmuch as the trust corpus became in effect the absolute property of the respondent's former wife, the income should be taxed to her.

Property settlements in connection with divorces have frequently taken the form of trust settlements and it is natural to suppose that this was true before the income tax amendment was adopted. This form of settlement gives the wife a security for the future which she would never have if she were compelled to rely on periodical payments made by the husband from his own earnings or property pursuant to a Court decree. Where such a trust settlement is made irrevocably and without any possibility of ultimate reversion to or participation by the husband, it is as abso-

lute and complete as a lump sum settlement, and for tax purposes it should be so treated. If it is not so treated, the income from the trust which regularly accrues to the former wife as beneficiary may escape taxation altogether through exigencies in the divorced husband's business or financial affairs.

Fifth Point

The income from the trust belongs to Evelyn W. Fuller, and to measure the respondent's income in part by that earned by the trust fund would be to deprive respondent of his property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

It is a fundamental proposition that to measure the income, for tax purposes, of one person by that of another, is a taking of property without due process of law. *Hoeper v. Tax Commission*, (1931) 284 U. S. 206. The respondent contends that to tax him on his former wife's income from the trust fund would be to violate that fundamental proposition.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

Nevada Compiled Laws 1929, Vol. 4, Sec. 9463:

In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court, shall by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if after the filing of the petition, it shall be made to appear probable to the court or the judge, in vacation, that either party is about to do any act that would

defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

SEC. 9465:

When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court may set apart such portion for her support, and the support of their children, as shall be deemed just and equitable. In the event of the remarriage of the wife, and there being issue of the former marriage, the court in which the divorce was granted may, on proper showing for cause, enter an order that the alimony previously awarded, or part thereof, be paid as ordered by the court for the benefit of the minor children.

In any suit for divorce now pending, or which may hereafter be commenced, the court or judge may, in its discretion, upon application, of which due notice shall have been given to the husband or his attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and for the support of the children of the parties during the pendency of such suit; and the court or judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing the husband from any quarter, and may enforce all orders made in this behalf, as provided in section 24 of this act.

SEC. 9466:

Whenever an order of divorce from the bonds of matrimony is granted in this territory by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for divorce brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall in its order decree and appoint.

Connecticut General Statutes, Revision of 1930:

SEC. 5182. *Alimony and change of name.* The superior court may assign to any woman divorced by such court a part of the estate of her husband and, in addition thereto or in lieu thereof, may order alimony to be paid from the husband's income, may change her name and may order alimony pendente lite to be paid to the wife in any complaint or cross-bill for divorce pending in said court. In fixing the amount which shall be allowed, the court shall take into consideration the amount of the husband's income, whether the same is derived from property already acquired or from his personal daily exertions or from both and, whenever an order shall be made for the payment, at stated periods, of alimony from the income of the husband, the court may, at the time of issuing such order, fix a definite amount which may, at any time, be paid by the husband in lieu of all periodical payments which would otherwise accrue after the payment of such amount. Any order for the payment of alimony from income may, at any time thereafter, be set aside or altered by such court. The costs of commitment of any person imprisoned for contempt of court by reason of failure to comply with an order of the court issued under the provisions of this section shall be paid by the state as in criminal cases.

SEC. 5723. *Income of trust fund, to what extent liable to creditors. Expenses of trustee.* Whenever property shall have been given to trustees to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold such income, and the income shall not have been expressly given for the support of the beneficiary or his family, such income shall be liable in equity to the claims of all creditors of such beneficiary. Any creditor of such beneficiary may bring an action against him, and any court having jurisdiction may direct such trustees to pay over the net income derived from such trust estate to such creditor, as the same may accrue, until his debt shall be satisfied. When any such trust shall have been expressly provided to be for the support of the beneficiary or his family, a court of equity having jurisdiction may make such order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require. The defendant trustee in any such action shall be entitled to charge in the administration account of such trust such expenses and disbursements as the court to which such action shall be brought shall determine to be reasonable and proper.

SUPREME COURT OF THE UNITED STATES.

No. 427.—October Term, 1939.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, *vs.* Alfred C. Fuller. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 22, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

This case raises the question of the circumstances under which income paid to the taxpayer's divorced wife under a trust, the provisions of which have been approved in the divorce decree, is taxable to him. We granted certiorari because of the asserted misapplication by the Circuit Court of Appeals of the rule of *Douglas v. Willcuts*, 296 U. S. 1, to these facts.

On July 25, 1930, respondent and his wife, residing in Connecticut, entered into an agreement in contemplation of divorce which provided, *inter alia*, for the creation by him of a trust of 60,380 shares of Class A common stock of the Fuller Brush Co. The trust was irrevocable and was to continue for ten years. During that period all trust income was to be used for the maintenance and support of the wife, or in case of her prior decease, then for the children; or in case of their prior decease, then for the heirs of the wife or as she should provide in her will. At the expiration of the ten year period the trust property was to be transferred to her outright. The agreement provided for other property settlements, for control and custody of the children, and for waiver by respondent and his wife of all claims against each other arising out of the marital relation. It also contained an agreement on the part of respondent to pay the wife $40 per week for five years, and, if at the end of that period his annual net income exceeded by the amount of the weekly payments the sum of $60,000, to continue those weekly payments for an additional five years or for such portion thereof as his annual net income exceeded the above sum.

The wife repaired to Reno, Nevada, and obtained a divorce decree on November 12, 1930, which "ordered, adjudged, and decreed that

said agreement entered into between the plaintiff and the defendant on or about the twenty-fifth day of July, 1930, be and the same hereby is approved." On December 22, 1930, respondent created the trust provided for in the agreement.[1] The corporate trustee thereunder received from the Fuller Brush Co. all the dividends and income from the trusteed shares during 1931, 1932 and 1933 and disbursed them all for the benefit of the divorced wife. On the failure of respondent to include those amounts in his tax returns for the years in question, the Commissioner assessed deficiencies. The decisions of the Board of Tax Appeals (37 B. T. A. 1233), sustaining the action of the Commissioner, were reversed by the Circuit Court of Appeals. 105 F. (2d) 903.

I. There can be no doubt but that respondent is taxable on the $40 weekly payment to the wife. That is a continuing personal obligation falling within the rule of *Douglas* v. *Willcuts, supra,* as a result of which those payments are taxable to him, not to the wife. *Gould* v. *Gould,* 245 U. S. 151. But that fact does not make the income from the trust also taxable to him. Although the provisions for the weekly payments and for the trust agreement were embodied in the same separation agreement, they were not so interrelated or interdependent as to make the trust a security for the weekly payments. Functionally they were as independent of each other as were the other property settlements from either of them.

II. Petitioner does not challenge the conclusion of the Circuit Court of Appeals that, so far as the trust agreement is concerned, the Nevada court retained no power to alter or modify the divorce

[1] The trust agreement provided that he was to transfer the 60,380 shares of stock on the books of the company from himself personally to himself as trustee and then to deliver the certificate for such shares to the corporate trustee. This was done. Also in accordance with the provisions of the trust respondent executed a dividend order against the shares directing the Fuller Brush Co. to pay all dividends to the corporate trustee. Respondent was the founder of the company and during the years in question was its president. It had outstanding only one class of voting stock, viz. Class A common. The amount outstanding during these years varied between 172,000 and 186,000 shares. Respondent owned 60,380 shares which together with the 60,380 shares under the trust constituted more than a majority of that class of stock. By terms of the trust respondent retained "exclusive voting power" of the trusteed shares during the term of the trust. If he died before its termination, the voting power would pass to the wife. During that period power to sell the stock was vested jointly in him, the wife, and the corporate trustee and could be exercised only in case all three agreed in writing. In case of such a sale, those three had the power to invest and reinvest the proceeds. They also were given the power to disburse, withhold, and accumulate the principal of the trust at their sole discretion, such power over the income being vested in the wife and the corporate trustee.

decree. It seems to be admitted that under Nevada law the wife's allowance once made is final, *Sweeney* v. *Sweeney*, 42 Nev. 431, unless the decree itself expressly reserves the power to modify it, *Lewis* v. *Lewis*, 53 Nev. 398, or unless the decree approves a settlement which in turn provides for a modification. *Aseltine* v. *Second Judicial District Court*, 57 Nev. 269. Here no such power was reserved in the decree or in the trust agreement approved by the decree. Nor did respondent underwrite the principal or income from the trust or any part thereof or make any commitments, contingent or otherwise, respecting them, beyond his promise to transfer the securities to a trustee. But petitioner argues that the rule of *Douglas* v. *Willcuts*, *supra*, should nonetheless apply since the decree recognized the husband's preexisting duty to support and defined that duty as coextensive with what the parties had themselves arranged, and since the husband simply carved out future income from property which he then owned and devoted it in advance to the discharge of his obligation.

We take a different view. If respondent had not placed the shares of stock in trust but had transferred them outright to his wife as part of the property settlement, there seems to be no doubt that income subsequently accrued and paid thereon would be taxable to the wife, not to him. Under the present statutory scheme that case would be no different from one where any debtor, voluntarily or under the compulsion of a court decree, transfers securities, a farm, an office building, or the like, to his creditor in whole or partial payment of his debt. Certainly it could not be claimed that income thereafter accruing from the transferred property must be included in the debtor's income tax return. If the debtor retained no right or interest in and to the property, he would cease to be the owner for purposes of the federal revenue acts. See *Helvering* v. *Clifford*, 309 U. S. —. To hold that a different result necessarily obtains where the transfer is made or the trust is created as part of a property settlement attendant on a divorce would be to hold that for purposes of the federal income tax the marital obligation of the husband to support his wife cannot be discharged. But whether or not it can be depends on state law. For other purposes, local law determines the status of the parties and their property after a decree dissolving the matrimonial bonds. See *Barrett* v. *Failing*, 111 U. S. 523. And while the federal income tax is to be given a uni-

form construction of national application, Congress frequently has made it dependent on state law. See *Thomas* v. *Perkins*, 301 U. S. 655, 659, and cases cited. In the instant situation, an inquiry into state law seems inescapable. For the provisions in the revenue acts[2] and regulations[3] concerning the non-deductibility of "family expenses" and of "alimony" do not illuminate the problem beyond implying the necessity for an examination of local law to determine the marital status and the obligations which have survived a divorce. The Nevada cases tell us that under such a decree as was entered here the obligation to support was *pro tanto* discharged and ended. And the trust agreement contains no contractual undertaking by respondent, contingent or otherwise, for support of the wife. Hence we can only conclude that respondent's personal obligation is not a continuing one but has been discharged *pro tanto*. To hold that it was not would be to find substantial differences between this irrevocable trust and an outright transfer of the shares to the wife, where in terms of local divorce law we can see only attenuated ones. This is not to imply that Congress lacks authority to design a different statutory scheme applying uniform standards for the taxation of income of the so-called alimony trusts. A somewhat comparable statute taxing to the grantor income from a trust applied to the payment of premiums upon insurance policies on his life was upheld in *Burnet* v. *Wells*, 289 U. S. 670. But the reach of Congressional power is one thing; an interpretation of a federal revenue act based on local divorce law, quite another.

For the reasons we have stated, it seems clear that local law and the trust have given the respondent *pro tanto* a full discharge from his duty to support his divorced wife and leave no continuing obligation, contingent or otherwise. Hence under *Helvering* v. *Fitch*, 309 U. S. —, income to the wife from this trust is to be treated the same as income accruing from property after a debtor has transferred that property to his creditor in full satisfaction of his obligation.[4]

III. One other observation is pertinent. Though the divorce decree extinguishes the husband's preexisting duty to support the

[2] Revenue Act of 1928 (45 Stat. 791) § 24(a)(1). The same provision appears in § 24 of the 1932 Act (47 Stat. 169).

[3] Treasury Reg. 74, Arts. 83, 281, promulgated under the 1928 Act. The same provisions appear in Treasury Reg. 77, Arts. 83, 281, promulgated under the 1932 Act.

[4] See Paul, Five Years with Douglas v. Willcuts, 53 Harv. L. Rev. 1.

wife, and though no provision of the trust agreement places such obligation on him, that agreement may nevertheless leave him with sufficient interest in or control over the trust as to make him the owner of the corpus for purposes of the federal income tax. *Helvering* v. *Clifford, supra.*

As we have seen, respondent did retain considerable control over the trusteed shares. But that was not the basis for the assessment of the deficiency by the Commissioner. It was not passed upon by the Board of Tax Appeals or the Circuit Court of Appeals. It was not included in the petition for certiorari among the errors to be urged or the reasons for granting the writ. Nor did petitioner brief or argue the point here. Hence we do not pass on the applicability of the rule of *Helvering* v. *Clifford, supra,* to these facts. Cf. *Helvering* v. *Wood,* 309 U. S. —.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 427.—October Term, 1939.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Alfred C. Fuller. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 22, 1940.]

Mr. Justice Reed, dissenting.

The opinion of the Court in this case is made to turn upon the question whether the law of the taxpayer's residence withdraws divorce settlements from the continuing supervision and subsequent modification of the courts. Two trusts, both irrevocable, in words precisely the same, drawn for the purpose of providing maintenance for former wife, recognized or approved by divorce decrees identical in form, are to have different tax results upon the settlor. If income taxes are predominantly important, prospective divorcés must locate in the states where the finality of the settlement is clearly established. Compare *Douglas* v. *Willcuts*,[1] *Helvering* v. *Fitch*[2] and *Helvering* v. *Leonard*[3] with this case. The reason given to support such a conclusion is that the liability of the settlor for taxes on trust income is based on the possibility that the settlor may be called upon for additional sums in the future. If the obligation continues, the tax liability continues. If the obligation is ended, the tax liability is ended. In *Douglas* v. *Willcuts* continued liability existed. It does not seem to me, however, that this continuing liability was the real basis for the *Douglas* decision. The basis for that decision was the prior appropriation, by the creation of the trust, of future income to meet an obligation of the taxpayer. The following excerpts from pages eight and nine show the foundation for the conclusion:

"Within the limits prescribed by the statute (and there is no suggestion that the provision here went beyond those limits) the court

1 296 U. S. 1.
2 309 U. S. —.
3 No. 426 this Term, decided today.

had full authority to make an allowance to the wife out of her husband's property and to set up a trust to give effect to that allowance."

"Upon the preexisting duty of the husband the decree placed a particular and adequate sanction, and imposed upon petitioner the obligation to devote the income in question, through the medium of the trust, to the use of his divorced wife."

"The creation of a trust by the taxpayer as the channel for the application of the income to the discharge of his obligation leaves the nature of the transaction unaltered. . . . In the present case, the net income of the trust fund, which was paid to the wife under the decree, stands substantially on the same footing as though he had received the income personally and had been required by the decree to make the payment directly."

The *Fitch* case was the first to rely explicitly upon the finality of the settlement. It pushed the idea to the point that the burden was upon the settlor to demonstrate the clear finality of the local settlement. This Court there refused to draw its own conclusion as to what the local law was even though numerous state cases touched upon the subject. In *Helvering* v. *Leonard*, this Court continues to apply the finality rule. It interprets the local law and finds that while "mere property settlements . . . may not be modified" the state judicial reserve power may be exercised where "the provision in the separate agreement, approved by the decree" is for support and maintenance. We are now at the point where the taxability of the settlor depends not only on the "clear and convincing proof" of the finality of the decree but the ability to produce that proof depends upon the skill of the draftsman of the settlement. Fine distinctions are necessary in reasoning but most undesirable in a national tax system.

It is no answer to the problem to say that if the stock had been transferred outright to the wife the husband would not be liable for the tax. If the stock had been kept by the husband and dividends paid as alimony, he would have been liable.[4] Either analogy might be logically followed in the trust situation but the choice of taxability of trust income was made in *Douglas* v. *Willcuts*. That case determines the "general rule."[5]

[4] Gould v. Gould, 245 U. S. 151.

[5] Helvering v. Fitch, p. 6 of slip opinion, decided January 29, 1940.

It may be assumed that the original obligation of the husband to support a divorced wife depends upon state law and to that extent that the state law is applicable to the determination of liability under the federal income tax act. But that necessary reliance upon local law need be carried no farther than the determination of obligation to support. Once that is determined the applicability of the theory of constructive receipt of income to discharge the obligation would come into play and would be nationwide in extent.

The obligation to support exists prior to the divorce decree. It is ended in Nevada only upon getting the court's approval to an arrangement which permits the creation of a fund to meet from year to year the obligation from which the Nevada law then and only then releases the settlor husband.[6] It is by the court's approval that the continuing obligation is discharged. Granting that a lump sum payment would terminate both the marital and the tax liability, the creation of a trust, approved by the court, for continuous payments in lieu of alimony seems to bring the trust income much closer to alimony than to the situation of a final settlement by lump sum payment.

This is particularly true in this present case where the settlement agreement shows that the husband retained voting power over the stock placed in trust. 60,380 shares of Class A Common Stock of the Fuller Brush Company, the only class of voting stock, was placed in the trust. An equal amount was retained by the taxpayer. The aggregate was a majority of the total of voting stock outstanding. This power, retained to the settlor, is of weight in determining that the present trust is more nearly akin to an agreement to pay alimony than it is to a satisfaction of an obligation by an unrestricted transfer.

The judgment should be reversed.

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[6] Nevada Compiled Laws, 1929, §§ 9463 and 9465.